Owners	Places of residence			Graduated
Johns Groes	New Brunswick	New Jersey	F A M P	1806
John Linsay	New Brunswick	New Jersey	F A M P	1807
Robt Ludlow Jr	New York	New York	F A M P	1808
Franklin Anderson	—	Maryland	[illegible]	1809
J. J. Stoddert	— — — —	Maryland	F A W S	1810
John T. Griffith	Burlington	New Jersey	F A W S	1811
Jno. M. Sherrerd	Mansfield	New Jersey	F. C. T.	

The four succeeding Lectures with the Lecture on Slavery were substituted in the place of the 20th

ion institution to confine the

LECTURE I

The doctrines of Economics* naturally precede those of politics, because families are the constituent parts of civil society. The domestic relations are those of Husband and Wife of Parent and Child of Master and Servant. The reciprocal duties and obligations, that arise out of these relations, are so well understood among Christians, that they require from us but little elucidation. On these as on a thousand other subjects in morals, the instructions of the church have in a great measure superceded the necessity of those of the schools.

I shall therefore confine myself at present to a few speculative questions concerning them, which are now doubtful in themselves or have been rendered doubtful by the prejudices under which they have been viewed by philosophers, civilians or divines. The first of these relations is that of Husband and Wife. Omitting on this subject all other questions, I shall confine myself merely to laying down a few principles on the nature, the ends and the duration of the Marriage contract. Marriage is the union of the sexes under the sanction of known and public laws. Its ends are in the first place to promote the happiness of man, in the next place to provide for the state, a succession of useful, virtuous and well-educated citizens. Both these ends would be defeated, by an uncertain promiscuous commerce, which have the most baneful influences on public morals and on social order. That the creator intended the union

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*A term derived from Oekodomeo a greek word signifying to govern a family. Politics is derived from a greek wod signifying to govern a city.

ion of the sexes, is evident from the forms which he has given them and the mutual sentiments by which he has attached them to one another. But the dangers with which he has thought proper to surround the chastity of the weaker sex, the helplessness of our infancy and the necessity of providing from their first years, for the virtuous education of children, require that union be put under the protection and controul of the laws. Otherwise women would be exposed to the greatest sufferings and the most mortifying degradation. Men would be at once licentious and unjust. Marriages among us according both to the principles of religion and the civil institution of the state ought to take place only between one man and one woman. But in consequence of the example of some of the most holy men of patriarchal antiquity and the permission of the law of Moses, a question of no small importance on this subject has long been warmly agitated among Christian moralists concerning the natural lawfulness or unlawfulness of Polygamy: of the law of Christ, and of the duty of those who live under the institutions of the Gospel, there can hardly be any doubt:* The question therefore relates chiefly to the age anterior to the Christian dispensation and the prescriptions of the law of Nature,‡ before God was pleased by a positive

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Note ‡ By which is meant those practical moral principles which were intended to regulate the conduct of Mankind antecedent to the bright shining in of the clearer light of divine revelation.

Note 5th *Some very learned and pious men have denied however, that even in the Gospel, there is any explicit prohibition of Polygamy and maintain that it contains only recommendatory precepts of perfection on the subject of Marriage

ive institution to confine the rite of marriage to one wife only. Does the law of nature prohibit plygamy, or is not marriage in those ages and nations which do not enjoy the light of the Gospel ~~life~~, left with their civil concerns, to be regulated by the customs of the age and the laws of the State. I confess I cannot perceive that the law of nature has prescribed any definite rule;* and therefore when the law of religion has not taken it out of the hands of the legislator, it is an affair entirely of civil and political regulation. Monogamic institutions have indeed been found in experience, to have had a much greater influence than polygamy in promoting the improvement and happiness of society, and experience affords a practical demonstration of the wisdom of the Christian law. But it does not prove, that those who did not enjoy and consequently did not conform themselves to this law were guilty of sin. Their practise was rather an error of judgement than a vice of the heart.

On this ground alone, I can defend the venerable patriarchs of the ancient church, who are proposed to us in scripture as the highest examples of piety, and virtue, and on these principles, I find I coincide with some of the most learned and pious writers, both

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*There are actions which are essentially immoral in their own nature, others there are which become immoral in consequence of a positive institution of a legislator. In perfect conformity with these principles stated in the text is the opinion of S. Ambrose who speaking of the marriages of the holy patriarchs says, "Polygamy has now (that is under the dispensation of the Gospel) become unlawful only in consequence of the positive institution of Christ. . . . . .

both of the reformed and primitive church.* The law of nature is written on the hearts of all men and is interpreted by conscience, enlightned by that

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* Besides the authority of St. Ambrose which has just been quoted, St Augustine speaking on the same subject says "There are different kinds of sin, some against nature, and some against the law. Now what crime did Jacob commit in marrying two wives. If you consult the law of nature, he is excused. If you regard custom, it then authorized polygamy. If you attend to the law, no law forbad a plurality of wives. Why then is polygamy now sinful? because it is contrary to the laws and customs." He should have added, to the command of Christ. St Aug. lib. con Faus. C. 47. . . . "One can hardly imagine," says Dr Doddrige, that had polygamy been regarded as adultery, in the sight of GOD, that he would have favoured the patriarchs who lived in it, with such intimate converse and friendship with himself." See Lect. 189.

Luther, Melancthon, Bucer those great and heroic reformers supported this principle, that polygamy is not contrary to the light of nature, but only of revelation. . See consultation signed by them and Athesus the application of the Landgrave of Hesse, in 1539.

Monsieur Saurin one of the most learned and eloquent men of his age, having mentioned the marriage of Abraham with Hagar, adds, "all the consequence which can be drawn from the patriarchs taking this second wife, is that in that age, polygamy was not forbidden. Whatever pains some grave theologians have taken to prove that this practise must have been criminal, before the coming of the Messiah, I cannot embrace this sentiment. It is difficult to believe, that a conduct ob-

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that portion of reason which is committed to the mass of mankind; Its genuine principles are learned by collecting those moral sentiments in which all nations have concurred, and separating from them such adventitious opinions and habits as are peculiar to different people and are the result only of their education. By this law, chastity was enjoined, but polygamy appears not to have been forbidden. If it be asked then, what is chastity, & wherein consists the dereliction of this virtue, if it be not violated by polygamy? Chastity is the indulgence of the natural appetite of the sex only as far as is consistent with our own happiness, the rights of others, and the general interests of society. The crime of unchastity consists in the pursuit of pleasure, contrary to honor, to interest, and the general good and especially in bringing an uncertain issue into the world, which must be miserable and destitute

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served by the most holy men, a conduct which implies not merely a transient act, but a regular habit of life, a conduct during the continuance of which, they maintained the most intimate communion with GOD, a conduct never reproved by GOD, at a time when he frequently armed against them both Heaven and Earth, for some particular sin, a conduct for which there remains no trace of their repentance; which was not forbidden by GOD, but in some measure directed by him, (Deut: 21. 15) I say it is difficult to believe that such a conduct should have been sinful and offensive to him, after this explicit declaration of his will on this subject. M. S. concludes that Jesus Christ having given us a clearer law of duty, having carried the principles of morals to a greater extent than they ever had been carried before. In conformity with these principles, one man can lawfully have but one wife. Dis. sur la Bible. Tom. 5 Dis. 19. P. 296. Ed. 1720.

destitute of a necessary and humane protection, or cast as an iniquitous burden on Society. But when the honours of modesty are saved by the direction given by public opinion, when the just rights of women and the protection and honourable provision of their offspring are secured by the laws, there is in the view of the law of nature, no longer any vice in the public and authorized union of the sexes under whatever form it be admitted. Vice consists not in the kind of pleasure afforded by any natural appetites, but in their consequences. Governed by such considerations, the ancients esteemed marriage to be a subject wholly of civil and political regulation, both with regard to the number of wives[A] which a man might lawfully posess, and to the degrees of consanguinity or affinity with which it might be lawfully contracted, and it was justly esteemed to be so until religion interposed by a higher authority to regulate it, in a single point.[B]

[A] If any person should object that then the law might permit a man to connect himself with as many women as a vicious appetite might solicit. This would be to suppose that the legislators were destitute of all prudence & virtue: it is forgetting that each wife must have her family, and her separate maintenance, it is imagining a consequence which never happened.

[B] Moses in his matrimonial code, seems to have proceeded on this idea, and therefore we perceive several of his injunctions and inhibitions evidently founded on certain political institutions and dictated by them. In one case a man was forbidden to marry the widow of his deceased brother, in another case, he was commanded to marry her, otherwise his right both to the wife and the landed estate of his brother devolved to the next nearest

It is objected to polygamy, that it is unfavourable to the energies of the human mind and the perfection of human nature, that it tends to strengthen licentious inclinations and habits, that it destroys the happiness of the most tender and delicate sex, and nourishes among them the most hateful passions. And on these consequences is built the ulterior conclusion that polygamy is contrary to the law of nature. I have no hesitation to admit as a philosopher as well as a Christian that the law of one wife as prescribed to his disciples by our blessed saviour, is most favourable to the interests of human nature and civil society. But the evils ascribed to the Polygamic institutions of the Eastern

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nearest male relation of the family. These apparently contradictory orders sprung out of the agrarian system established by Moses in the land of Israel. He divided the whole territory into 600,000 parts according to the number of families which entered into it under the conduct of Joshua, and these portions were appointed to descend by entail a perpetual succession to the legal heirs, respectively of the original families in such a manner however that no man should be allowed to hold two portions at the same time, either by gift, by inheritance or by marriage. If then the deceased had left an heir to his estate, the surviving brother who stood next to the inheritance was prohibited from marrying the Widow probably that no unfair means might be practised to remove the heir. But if he had died without issue, the brother was commanded to marry the widow both out of humanity to her, and to preserve the lineal order of the inheritance. These facts may serve to settle the question of the lawfulness of marrying 2 sisters which has so long agitated Christendom. There can be no natural immorality in marrying 2 sisters in succession, more than 2 brothers. But Moses who permitted polygamy, only prohibited marrying them at the same time, lest the jealousies of love should divide those whom the affections of Nature had united.

Eastern nations have been greatly exaggerated by a natural era of the human mind. in order to brand with reproach what is considered as a dangerous opinion and a criminal practise. It is not necessary to support truth by falsehood, and if one examine with candor the real character and circumstances of those nations. we shall not find the inferences intended to be drawn from them supported by facts. It requires a wider compass of observation and greater power of discrimination, than are possessed by most men to form a sound judgement of manners, ideas and customs different from those in which we have grown up, an which have therefore become incorporated with all our habits of thinking.

We are prone to refer them to a standard framed by our own prejudices and therefore to impute to them false consequences, and to draw false conclusions concerning them. If the Eastern nations are at present inferior in the energies both of body and mind to the people of Europe. this is not to be ascribed to the single cause of polygamy, but to the combination of an infinite variety of causes which equally affect all nations in their decline. Once Asia possessed that superiority which Europe now enjoys. Alternately the polygamic and monogamic nations haves been elevated to the summit of glory, & sunk into the depths of degeneracy. No certain conclusion on this subject can be drawn from such examples.

Equally uncertain is the next consequence imputed to the patriarchal institution. that it tends to strengthen licentious inclinations & habits. Judging from the interior of the family of the patriarchs as it is presented to us in the sacred scriptures. nothing can be more unfour-

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ded than the reproach. And if we take an estimate ~~from~~ of the moral influence of polygamy, from the manners of the East, the best informed travellers who have had the most intimate opportunities to examine their state, assure us that their women are distinguished for their modesty and their men for their delicacy, and circumspection of their conduct towards the whole ~~sex~~ sex, out of the precincts of their own families. Certain it is, that female chastity is placed under the protection of more vigilant and vigorous laws, than in any of the nations of Europe: it is more securely guarded by the force of government, and of public opinion. There is a wide difference in the effect produced on the heart between a vagrant commerce with mistresses and the fixed connections of marriage formed under the superintendance of the laws in which the union must be permanent, the wife must share the honours and property of the husband and both must be occupied in the modest and laborious cares of a household. The ideas of a wife and the grave and serious duties of a family quenches that lust which is only inflamed by a mistress, the mere instrument of gratifying a brutal passion.

But it is added, this institution tends to destroy the happiness of the most tender and delicate sex, and to nourish among them the most hateful passions. We may be here again judging from our own prejudices, than which no standard can be more fallacious to the feelings of others. Ideas of happiness in different countries, become identified with national customs, manners and habits of thinking. The representations ~~of travellers~~, which are given to us by travellers of the state of women in the East, can seldom be

be accurate, because men are seldom admitted within their domestic recesses. Few travellers have had such advantages of examining them in the bosom of their families as Lady Mary Montague and she presents us with a picture of great tranquility and contentment. The christian law indeed has greatly ameliorated and ennobled the condition of the sex.[x] It is such that no solid argument can be drawn from it to demonstrate that polygamy antecedently to the institution of Christ was contrary to the law of nature. The principle of the natural unlawfulness of polygamy derives a more plausible support from the equality of numbers of the respective sexes, the males having been found, when compared with the females, nearly as 13 to 12 or more accurately perhaps as 20 to 19. The intentions of the author of nature, it has been supposed, are evidently indicated by this ratio of the sexes, the small surplus on the side of the males being allowed for the greater wastes occasioned by their more hazardous occupations. The polygamic institution in effect destroys the ratio. This is the argument and it certainly is not without solidity and force. To this argument however, it may be replied, that this ratio in the early periods of the world, could not have formed the basis of a law or indicated to mankind the will of the creator, because it was not then known.

The discovery of the fact that the sexes are nearly equal in numbers, requires long and attentive observation and the establishment of an exact census in various countries thro a long series of time. It demonstrates indeed no inconsiderable progress made in civilization and in science,

[x] But their happiness in the East, if not of so exalted a nature as in the West, is at least equally calm and unruffled.

and it may even be doubted, whether it was ever attempted to be ascertained, till the accurate search of the moderns made it an object of philosophic attention. That fact then could not have been made the basis of any moral law, since it is evident that it requires in order to its discovery researches, observations reasonings to which the greater portion of men are wholly incompetent: which it must have been so late in the progress of society, before it could have been known. It may farther be replied that the distinctions of poverty and wealth, which necessarily grow up in society, in a course of time, destroy in effect that equality between the sexes as far as regards the right of marrying, on which the argument is founded. Many must be too poor, to allow them prudently to marry: and many must be criminal in marrying with the certain prospect before them, of introducing an offspring into the world, only to want, to misery and to vice. So that what nature had originally made equal, moral causes which are certain and necessary in their operation have again rendered unequal. Hence the law of marriage, and the right to a plurality of wives might be considered by natural reason, as being relative to rank and fortune, that is to the ability of maintaining so many families, rather than to the ratio of the number of the respective sexes. From all these illustrations, it results, that there was originally no law of natural morality, which prohibited polygamy, and its immorality now rests upon the positive institutions of Christ the great moral legislator of the Universe. It results also, that before the coming of the divine teacher upon earth, marriage was a subject purely of Civil and Political regulation. * See next page.

Nor let it be imagined that female honour and safety were in that case, under an insecure protection, or that the public sense of crimes against chastity was weak. Moses punished that class of crimes with death. And further husbands, brothers, i.e. the entire nations will always be deeply interested in the honours of their daughters, their wives and their sisters, and be disposed to guard it by the most energetic laws.

※ The Christian church seems also in a great measure to have regarded it in this light, till the 9th century according to Mr. Selden, when Leo Sapiens in the East, and Charlemagne in the West rendered the interposition and benediction of the Church necessary to the completion of the marriage contract; but it is to be observed that the Roman law coincided with religion in the prohibition of polygamy. The edict of Charlemagne, was issued about the beginning and that of Leo about the close of that century. All the majesty, the authority, and the pain of religion were then employed to enforce the sacredness of Chastity. But since the church has lost her powers and the moral discipline of the various religious sects, imposes too feeble a restraint upon the passions of men, it is time for their civil power again to interpose by more energetic laws than at present. All their force ought especially to be directed against the crime of seduction. Is not the chastity of women more precious, than property which the laws have guarded by the severest pains. And are not seductions more injurious to the happiness of individuals and to the peace and order of Society, than all those crimes which are now ranked under the formidable head of felonies. Women already suffer severely for the loss of their virtue, in the risques and shame which pursue them. It is the other sex which requires some more effectual restraints on their passions. And why should it not be possible, by the nature of the punishment attached to the crime of seduction, to render it as infamous as robbery and theft.

Do we see in effect that the rights of property are less secure, or esteemed less sacred, because they are established exclusively by the civil authority of the state, and take their various modifications from the political views of the legislator? Is not the man who violates them, esteemed a thief, a robber, fraudulent and an object not less of public indignation, than of public punishment? And are the rights of chastity less sacred in the eyes of legislators and the great body of the citizens? Those wise and good men who are justly esteemed the fathers of our religion, might have used the privileges given to them, by the laws of their country and the customs of their age with the truest chastity of heart, and the greatest purity of domestic manners.* And is

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* Nothing can be more weak and absurd than the apologies which are attempted to be made for these ancient worthies, by certain christian writers, who are obliged to maintain according to their own principles, that the polygamic institutions of the patriarchs, were equally contrary to the law of nature and of Christ. They say, the darkness of the dispensation under which these good men lived, must form their excuse. As if the laws of nature were not clear to good men in every age: or as if the purity of their hearts could ever habitually have sought a sensual indulgence beyond the bounds of temperance and chastity. They say again, that divine providence had some important end to subserve in that period of the church, by the permission of this connection to these illustrious men. What unworthy ideas must we entertain of the power and providence of God if we believe that there is any object necessary or useful for the world, which he cannot attain by virtuous means, that there is any end for which he could

is chiefly with the view of vendicating them from the reproaches which have been attempted to be cast upon them, by certain loose but ingenious writers, that I have chose to enter so far as I have done, into this subject.

The law of Christ, indeed, aims at a higher degree of perfection than the patriarchal or mosaic law: and the high authority by which it is enjoined, should impose it as an inviolable rule of action on all its disciples, and the experience of its beneficial influence among Christian nations, should powerfully recommend it to all wise and virtuous legislators.

The next question on this subject respects the duration of the marriage contract. And tho' some nations particularly in the East, have admitted of temporary marriages under the laws which provided for the comfort and maintenance of the women and the education of her offspring: yet reason and the interests of society and humanity seem to require that the union of Husband and Wife should be permanent during the common life of both. This regulation will contribute in the most effectual manner to restrain disorderly and licentious passions: it is the best security for domestic peace, and public order and affords the strongest

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could ever give his sanction to vice. They add further, that the infirmities of human nature, in that unenlightned age, required great indulgence. What! was not a man who was able to sacrifice a beloved son at the command of God able to subdue an unlawful passion for a female? Impossible. but even if such a supposition could be made, with regard to the holiest of patriarchs, can any person rationally believe that God would operate a miracle as in the case of Jacob and descend to change the natural order of things, merely to enable a favorite to obtain the object of a criminal passion.

strongest motives of the most favourable opportunity for the virtuous education of children, where the undivided efforts and interests of both parties concur in this important object. Little doubt can exist on this head inasmuch, as it has been the general sentiment both of Christian and Pagan writers.

The laws of marriage ought to be especially calculated to protect the weakness of the female sex and to save from outrage the tenderness and delicacy of their attachments. To this end, no principle seems better adapted, than the perpetuity of the marriage contract, together with the enjoyment on the part of the woman, of such rights and privileges, as a just and humane legislation ought always to confer on a Wife. But the principal enquiry under this head, which has occupied the attention of civilians and moralists, is whether there exists any excuses, which may in consistency with virtue and good morals, dissolve this contract after it has been legally formed. Some civilians seem to have multiplied the causes of divorce unreasonably, and others, as unreasonably to have restricted them to only one- unchastity or infidelity to the vows of marriage. This restriction they profess to derive from a very humane and benevolent decision of our Saviour, which forbids a man to put away his wife except for this reason alone. But they do not sufficiently consider that, the great legislator of the church, does not in this, prescribe an universal law of divorce, but is merely correcting an abuse which had grown up by time, in the exercise of that power which the laws or customs of the country had given to Jewish Husbands. They had usurped the prerogative of dismissing their wives

wives from their families and protection solely on their own authority and for the most trivial differences and dislikes. This excessive and unjustifiable exercise of an undefined power, he meant to restrain with that benevolence which characterizes all his laws, and which distinguished his conduct in life. We ought to distinguish between the rights of repudiation claimed by a Jewish husband, depending as it did, merely on his own authority and caprice, which is here so justly limited by Christ and the right of divorce which depends upon the impartial sentence of the law, which is to be exercised only thro the agency and by the authority of the magistrate. To the former, the rule of Christ, which is merely a moral prescription to regulate the conduct of individuals in an important case applies with the greatest humanity. The latter results from a more comprehensive view of human society and human nature, and it does not appear that our Saviour designed to prescribe any absolute rule concerning it to legislators and civic magistrates, for to these alone it must apply, no individuals having a right to exercise the powers of divorce.

We are at liberty then to examine all the causes which have at any time been urged by moral writers as sufficient to dissolve a union w.h virtue and a just consideration of the public order and of domestic happiness always design in its formation to be perpetual. But in this enquiry we ought to bear in mind, that the good of society requires that divorces should never be permitted but in case of extreme necessity. Nothing will contribute more to domestic harmony, and to secure justice and kindness to a wife, than the almost unsurmountable obstacles, which the

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law ought to oppose to a separation. When the parties know that they are obliged to remain united, each will find an interest on all questions of difference, between them in mutual concession and moderation. If this high and sacred union were made capable of being dissolved on slight occasions, those occasions would never be wanting, to the vicious and ill-disposed. The smallest umbrages might easily and would frequently be magnified into the most cruel animosity and injustice. The condition of perpetuity in the matrimonial contract, besides its beneficial influence, on the public morals, is a guard which reason and humanity demand, for the security and happiness of the weaker sex. If it were transient and uncertain, they would commit their safety in the most essential points too often to the capricious will of men fickle in their attachments, or rendered cruel by some new passion.

One ground of divorce has been agreed upon by all writers, and admitted by the laws of all nations, that is, desliction of Chastity or infidelity to the vows of marriage. This ground is acknowledged by a universal principle of the law of reason, that fraud or failure in the fulfilment of a contract, exonerates the innocent and deceived party from its obligations. In marriage therefore, when the rights of the husband & the wife are alienated & transfered to the possession of another, the contract is violated, in its most essential article and the law may justly grant a divorce to the injured party suing for it, yet in such a manner, (and this would be additional security to the Morals) that the party offending should never enjoy the privilege of marrying again. Altho infidelity be a reasonable cause of divorce, the offender in order to obtain

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a dispensation from the bonds of matrimony should never be allowed to plead his own faults. Faults aught to be punished not rewarded and however painful the idea of infidelity in a husband or wife may be to the honor of jealousy or of love, yet there are situations in which it is preferable, to suffer even this pain especially for his wife, than to submit to the consequence of a forced separation. Under this head may be brought obstinate desertions when it can be proved to have taken place without any just cause. Such desertion defeats the very end of the contract and like the former case, is a fraudulent violation or abandonment of its conditions. As in that case, likewise it would be contrary to good morals, to give the offending party the right of contracting a new marriage, it would be rewarding and encouraging ~~this~~ a crime. To these causes, I would add habitual intoxication, as defeating one of the principal ends of marriage, the happiness of the parties and the proper care and education of their offspring. And if it be the wife, who is addicted to this vice, there can be no security for her fidelity: if it be the husband, there can be no security either for his fidelity, or for a humane treatment of his wife.

She married a man, but she finds herself united only to a brute. Inhumanity of treatment is admitted by the common law to be a reasonable ground of separation of a wife from the husband's bed and table.

In my opinion, it is a sufficient ground of divorce, so that the injured wife might be permitted to form a new connection, but not the brutal husband. Inhumanity in him not less than infidelity in her, is a violation of all the ends and conditions of the marriage contract.

If this be denied, because there is no uncertainty in the offspring in one case as in the other, I answer that it is a vile and base idea of marriage to suppose that it is merely making a woman a vulgar instrument of giving heir to an estate. Other causes have been assigned by different writers, but apparently with less reason as sufficient ground of divorce. Among these great contrariety of temper, which mars the mutual happiness of the parties. This cause is infinitely too vague, and uncertain to be designated in a law with that precision which is necessary for justice. Besides the most ill-disposed would on this principle, always have too much power. Certain diseases supposed to be incurable have also been enumerated among the causes of divorce. But not to mention the difficulty, not to say impossibility of ascertaining what or whether any diseases are incurable: there seems to be a peculiar cruelty involved in this principle. After the fortunes and happiness of two persons have become so intimately linked together, as they are in marriage, it is unreasonable an inhuman that because it has pleased divine providence, to affect one with a severe disease, the other should have power not only to add to the calamity, but to take away from the miserable, who ought to be tenderly cherished and protected, the last ray of consolation & hope.

The last of these imperfect and inadequate causes of divorce wh. I shall mention, is mutual consent. To the willing no injury can be done. Consent may be a sufficient ground of separation, but not of divorce. Divorce implies a right of marrying again, which might often prove too great a temptation to the strongest or most malignant party

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ty to harass the other into consent by intolerable vexations.

Individual cases of hardships will sometimes undoubtedly arise from a rigid adherence to the principles above laid down. But there is no tribunal which can safely be invested with the power of suspending the rule or of judging of its equitable exceptions. Society like the universe must be governed by general laws.

Thus have I treated of the principles of marriage before and since the era of Christ, chiefly with a view of rescuing from licentious reproach, the fathers of our holy religion, and endeavoured briefly to state ~~to state~~ those causes which may be safely and reasonably pleaded, at any time, to dissolve a connection so sacred, w.h has once been rightfully ~~for~~ formed.

End of Lecture 1st.

LECTURE 25 2nd

Having treated of the union of the sexes under the ~~sanctionofthelaw~~ sanction of the laws, and considered it as it is modified and limited by the Christian religion to one person of each sex, I shall now point out the crime of any clandestine and illegal commerce, which is the principal offence against this most important of the domestic relations, that this consideration may contribute still more to invite to marriage and to strengthen the sacredness of its ties when they have been already contracted.

In proportion as loose and vagrant connections are permitted, marriage is regarded as inconvenient, and falls into disuse: men become profligate and enervated: women are unhappy and contemptible, in proportion as they are dishonored, children growing up without proper care, example or education become ignorant, vicious or abandoned & from all these causes, the public morals and the interests of the state, suffer deep and irrecoverable injury. There is no vice which men seem so willing to excuse to themselves; yet none in the whole catalogue of crimes is productive of greater evils to Society. Men, because, they do not directly suffer from the consequences of their own seductions, are unfeeling, cruel and base. Remorseless they leave the victims of their pleasure, to the most exquisite sufferings to infamy and ruin. If these unfortunate women return to a sense of virtue, what shame and anguish overwhelm them. On the other hand, if a vicious appetite or despair from the loss of character tempt them to a life of prostitution, what a

guef is prepara for the public morals? And who can estimate the cruel injuries done not only to society, but to an unacknowledged and abandoned offspring, whom the guilty father had no right for his own pleasure, to bring into being and then barbarously to sacrifice it to want to disgrace and vice. If violations of property are punished with imprisonment and death, what pains can be too severe, for violations of chastity, which draw after them a long train of much more aggravated evils? It diminishes the guilt but little, that they are committed with the consent of the unhappy sufferer who has been deceived and betrayed: it is the difference only of swindling and robbery. Hitherto, women whose frailty deserves compassion, have been the sole or principal sufferers for this crime, by the natural dangers which attend it to them, by the severity of the public opinion and their own terrible sensations, when left to the consequence of their lost virtue.

If the law would even oppose an effectual check, to this rottenness and gangrene of society, it must impose upon the aggressor sex, who are chiefly culpable, some pains equivalent to those of w[h] they become the occasion to their seduced and unhappy companions. Every state ought vigorously to preserve the rights and enforce the obligations of marriage. Every good man will, every citizen ought to respect these. They are the best security for the tranquility of society, and for the comfort and happiness of all, especially the weaker sex. They are the best security for furnishing good and useful citizens to the state. The public government and order is favoured by

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the internal oder and government of each domestic society. Marriage may also be regarded as the parent of public industry on which the prosperity of states is founded. The economy, and the peace, and oder of families and the secure possession of the objects of a virtuous affection, which is to be found only in family relations, at once impose the necessity of industry, afford the most powerful motives to encourage it, and create that calmness and leisure, which enables us to pursue it with advantage, whereas the restless passions, the constant intrigue, the dissipation of heart, created by a licentious commerce, of the sexes, makes it the enemy of all industrious and useful occupations, the very nurse of idleness, with all its consequent evils. With great reason it was then that the Spartans compelled their citizens to marry, and that the Romans invited theirs by many important privileges. Seduction introduced into genteel families, will often affect the hearts of men with a degree of compunction who feel little concern at corrupting the virtue and destroying the happiness of women in the inferior ranks of life. The pride of rank and fortune often indisposes and in some measure, disqualifies men to enter into the distresses of them who do not enjoy the same station and advantage in Society with themselves. Each class sympathize chiefly with their equals, with whose feelings, experience has made them acquainted. This defect of sympathy in the superior with the inferior ranks of life, is encouraged also by the false idea that the sensibilities of the latter are less delicate and fine and that loss of character is to them an object of comparatively small importance. On the other hand I have no scruple to assert that their virtuous sensibilities are generally more pure and exqui-

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site than those which are found in the highest ranks, and the loss of character to them, is often the most cruel want and the deepest wretchedness and becomes at length the dire impulsion to abandoned prostitution, and finally to the perpetration of every crime.

When women in order to guard one vertue which is most difficult and important to be preserved, have collected the whole into a single point, that it may be strenuously defended: if they have been seduced to deliver up the fortress of their fame and character, they commonly abandon with it all their other vertues, and the seducer who by vows and protestations, has betrayed too credulous innocence, is chargeable in the judgement of GOD with all the anguish, the distress and guilt which follows. And what must be the degree of that anguish wh. follows the incest of unlawful commerce, when a woman whose maternal feelings are so exquisite, who surveys with such pride, the infant she could honorably own, who would bend over it with such ecstacy, who would rush into flames to rescue it from danger, when that woman unlawfully becomes a mother, and urged to distraction is often tempted to stifle all the feelings of nature, and become herself the executioner of that dear infant to hide her own disgrace. If the pain of the deluded sufferer, if the loss of so many pleasures and so many hopes as accompany the innocence of a vertuous connection, if the vices the shame, the misery which follow the dereliction of vertue, in the sex can constitute guilt; how aggravated must be the guilt of her seducer, and how base must be the heart of that man who for a moment of thought less pleasure, will hazard the bringing of such evils upon

upon one whom love should cherish, whom honor and generosity should protect. Men there are whose generosity would shrink from the enormity of bringing disgrace and ruin upon the innocence of confiding simplicity of a young woman in a decent station of life, who are little scrupulous in seducing married chastity. They say to themselves, married women are more secure by their state, from the disgrace of detection, and the foul dishonor which blasts the fruits of unlawful love in an unmarried state. Yes, but she is never perfectly secure and then the crime is greatly aggravated by the dishonor and affliction of a whole family, and by the anguish of a husband robbed at once of his honor and his principal treasure. No wealth no fortune can purchase back the peace of mind of an injured husband and father of a family, and in many instances death itself would be a preferable evil.

But admitting that the crime could be preserved a secret, is it less a crime on that account? The guilt & sinfulness of an action is not to be estimated by the consequence of a single act of the kind, but by the consequences which would flow from such a class of actions, admitted as a rule of general conduct: for no individual has a right to have peculiar rules of exemption established in favour of his passions. What would be the effect of such a principle, that secrecy while it protected also justified adultery or reduced the crime almost to nothing. To what jealousies, distrust, suspicions, infelicities would it not give rise? No ties of duty would prevent the rising of a new passion in the heart of a married woman and nothing but the want of address

or a safe opportunity to indulge it would make it criminal. All domestic confidence, all the harmony of society would be destroyed. The seduction indeed of a virgin or of married chastity considered in the light in which they have been placed will generally be condemned by the reason and conscience of men. Yet there are not a few who will excuse illegal connection with those who have already lost their virtue, or who are ready to make a mercenary sale of it. Altho' this appears to be less culpable than the two former cases, it is nevertheless a crime highly pernicious to society and destructive of the moral habits of the individual. Society is deeply injured by a practise which effeminates and debauches the manners of its citizens, and especially discourages marriage and prevents the forming of regular families w^h are the strength of the state and the source of its prosperity, and as it influences the moral dispositions and habits of individuals. There is certainly no vice which so entirely depraves and debases mind ~~as~~ this low and criminal commerce with lewd women. A gross sensuality without sentiment, without being mingled with those refined, delicate and generous emotions, which connect a man ~~with a woman~~ with a woman of honor and virtue, and without being purified by the dignified affections, the tender and virtuous cares of the father of a family weakens the powers and relaxes the exertions of the soul, and indisposes the heart in a peculiar manner for the pure and spiritual pleasure of Virtue & Religion. It blunts remarkably the fine and quick feelings of the moral sense, and perhaps the greatest crimes which ever disgraced human

human nature have taken birth amidst the scenes of prostitution.

Having pointed out the criminality of any union with the sexes not authorized by law under whatever form it may take place, it may be useful to give a solution of this moral enquiry, How far does reason and a strict regard for chastity require men to carry their restraints on this subject? The rule of the Gospel is most conformable to the dictates of sound reason, that the guards of virtue should be placed upon the heart and the thoughts. This rule holds especially with regard to the passions towards the sex. It is of the utmost importance to preserve the imagination and the fancy chaste. It is else in vain to hope to regulate the manners. A loose wit, indelicate conversation, pictures, writings, scenes which tend to inflame the imagination, the indulged visions of a sensual fancy are culpable in the next degree to actual prostitution. The law of God requires that our thoughts shall not sin, and the law of reason approves it. From the whole it appears that the strong affections which attract the sexes to one another, prove that their union is a dictate of nature. At the same time the interests of society, the happiness of the offspring and the true happiness of the parties themselves require that this union should never be permitted but in marriage, that is under the authority and under the sanction of public and general laws.

A few more remarks I shall make on this state before I proceed to consider the rights and duties which result from a reciprocal relation of Parents and Children. Marriage its duties and privileges are left by the law of nature to be regulated by the wisdom and policy of

of States. By the law of religion, it can only now subsist between one man and one woman. Whatever interest may govern the parties in forming this connection, it ought to be cemented by esteem, and that degree of love at heart which will lay a reasonable foundation for the continuance of mutual comfort and happiness. Marriage ought never to be forced by the authority of the parents, nor contracted merely on the principles of ~~[illegible]~~ mercenary interest. In one case, alienation of mind and misery are almost certain consequences; in both, too great temptations are created to matrimonial infidelity. The marriage engagement ought ever to be made in the most formal and solemn manner possible in order more effectually to secure the performance of duties which may afterwards become difficult to be ~~[illegible]~~ observed. It is right therefore, to call in the aid of religion, that vows so important, being contracted in the presence of almighty God, may bind the conscience with the solemnity of an oath. Since in every society, there ought to be some head, a certain degree of superiority and power should be vested in the husband, which ought however to be exercised with nobleness and generosity, a certain ~~[illegible]~~ submission and subordination is expected from a wife, which ought to be yielded with complacency but without meanness. As persons in the married state, ought to be devoted to promote one another's happiness, infidelity is the most cruel ~~[illegible]~~ of all injuries. But all levity of conduct, also all suspicions, attachments, imprudent amusements, all marked indifference or neglect; in a word, all actions which are calculated to excite jealousy, or create uneasiness in any

any way in a generous and liberal mind, ought to be sacredly avoided.

Having stated the general principles which affect Marriage & the grounds on which criminality of enjoying its pleasures out of the bounds of Wedlock, rest, I proceed in the following lecture to consider the duties of parents which is the next domestic relation.

End of Lecture 2nd

LECTURE 3rd.

From marriage, the domestic relations commonly arise as those of parents, children, masters, servants and their respective rights and duties. I will take only a very brief view of them for the nature of these relations and the obligations which result from them are already generally understood. The instructions of religion, the laws of our country, public opinion and general custom have left little to be learned concerning them and they have given rise to few controversies.

Of Parents and their Duties.

Men have no right to gratify their own passions or to pursue their own pleasures to the injury of society: or to become the cause of existence to a helpless offspring and then to abandon them to want, to shame and to vice. This I have said before, is the chief ground of the criminality of those connections between the sexes, which are not formed under the sacred ties of marriage and the authority and sanction of the laws. Not less criminal is the parent, tho' he has become a parent lawfully, who neglects the care and protection of his

children who does not employ the best means in his power to render them happy and to place them above dependence on the bounthensome charities of society. and who does not study to cultivate their minds, and ~~he~~ she acts and to preserve them from vice. As he has been the occasion of giving an involuntary being to his offspring, he is charged by nature and religion with the care of their happiness. His duties then may be comprised under the heads of maintenance, education & provision. By maintenance is meant subsistence while they are young and incapable of providing for their own support: Nature strongly indicates this duty, by furnishing in the breast of the mother a rich and delicious nourishment for her infant. She farther indicates it by that instinctive propensity which she has implanted in man as well as in most other animals. to cherish, protect & assist their young, while they are yet unable to assist themselves.

As men are prompted to this duty, by some of the most powerful instincts of our nature, there is certainly no great merit in fulfilling it, the neglect of it however, is from this very circumstance rendered so much the more culpable. Accordingly there are few vices against which a stronger detestation is expressed by all men. A mother who abandons her infant, a father who leaves his child to want or to sufferings which he is able to prevent or remove, is esteemed worse than a barbarian and hardly thought to posses human nature. But it is far from being sufficient to acquit the duty of a Parent, that he make provision for his infant while it is yet unable to assist itself, unless he enable it farther to make provision for its own subsistence and comfort in future life. Whatever

ever fortune a man may be able and disposed to leave his children, he discharges but a small part of his duty to them, unless he render them in some degree independent of fortune. And this is to be accomplished only by a proper and useful education correspondent to their state and condition in society. Another remark not less worthy the attention of every parent, is that the mere indulgence of an instinctive affection in making provision for our children, from being a virtue, often degenerates into a vice.

It becomes a weak gratification of a selfish passion, which by a silly fondness often disappoints its own aim. The parental affections in order to be virtuous, ought to be regulated by a firm, inflexible sense of moral obligation. They then become noble and dignified principles of action, and instead of granting hurtful indulgencies thro a fond imbecility to those whom we love, and considering only their momentary pleasures take into view, their most enlarged and most durable happiness, To which, temporary restraints become frequently the most useful and most necessary sacrifice. The proper education of children so as to qualify them to provide for their own subsistence and for their happiness both in time and in eternity, is a duty incomparably more important than merely providing for their own maintenance.

It is the second duty incidental to a parent of which I propose to treat.

Education even as it respects the humblest orders of Society embraces an extensive sphere. Nature has given to man only the powers of action: it is education which directs their operations. The soil alone is prepared by nature, its culture and the harvest. it shall produce depend entirely upon education. It is education chiefly which makes man what he is.

In the idea of education, is comprehended not only what is conveyed into the mind by direct and positive precept from parents or instructors, but every impression which is received directly or incidentally from instruction, example or intercourse with Society, which contributes to form the character. One of the first duties of a parent is to teach his child or place him in a situation in which he will be taught the requisite arts for procuring his own subsistence thro' life, without the hazard of falling at length as a burden on society, or the temptation of becoming injurious to it. The poorer classes of the community should be trained to useful industry, geneially in some manual occupations.

The higher orders whose wealth affords them greater leisure should usually be prepared to serve themselves and their country in some liberal profession. Nothing is more pernicious to mankind than want of a useful and virtuous employment either for the mind, or for the body or for both. This maxim condemns not only idleness which so often proves a temptation to pursue improper pleasures in order to fill up the void of life or to embark in base and fraudulent practices, to supply the wants created by extravagance, but condemns also those frivolous acts which are unworthy the dignity of Human Nature, and those pernicious ones which tend to corrupt the public virtue by presenting to the mass of the populace and especially to youth allurements to expence and dissipation. But that which is chiefly to be regarded in education, is the moral and religious cultivation of the heart and manners. The mind should early be imbued with the principles of piety & virtue, & by a prudent, steady and dignified discipline, the manners ought to be formed to a serious respect for the institutions of religion,

to the exercise of the humane and benevolent virtues and to a noble self-command in the restraint of all the turbulent, selfish and licentious passions. By instruction and example skilfully applied and a well-adapted selection of society, children and youths may be formed to almost any model. We see the combined influence of these principles exemplified in national characters, in the characters of many religious sects, and it might be still more strongly illustrated in the spirit and manners of particular families, if the force of education were always judiciously employed. It is of the utmost importance in the very earliest periods of life, to take possession of the mind by good principles, to incorporate them in the character, and to tincture by them all the habits of thinking, and the habits of life: otherwise, false principles favourable to vicious indulgencies will almost necessarily take birth amidst the passions of youth. and at the same time, if a vigorous and prudent discipline be neglected, they can hardly fail of being led astray by the companions which inexperience and the love of pleasure will naturally solicit. But the best precepts will lose their effect, unless they are accompanied by a virtuous and pious example. The principle of imitation is a much more powerful instrument of morals in youth, than merely depositing in the memory the general maxims of duty, unsupported by example. A serious respect for the institutions of religion therefore, a pure and chaste conversation, the pattern of a strict integrity, of a warm and active benevolence, and of prudent and circumspect manners, especially in the presence of young persons, as they are duties of all times and of all persons, they are peculiarly duties of parents with reference to the education of

their

their children. Nothing can be of higher importance, than to inculcate upon their tender minds, just sentiments of the divine being, of his infinite perfection, his universal government, his supreme judgement, and to place before them continually in an amiable example, the beauty of virtue, and the dignity of piety. Without religious principles the law of morals, will be deprived of its most powerful motives on the heart, its ideas will want precision, the rules of duty being warped by the bias of self-love, its prescription will want authority.

It requires however, the greatest judgement to render religion acceptable to young persons, and to derive the full benefit from its influence. There is an authority, a rigor, a gloom in the character of many pious persons, which is calculated to disgust and alienate youth rather than to inspire them with respect and love. True religion is serene, dignified, mild, indulges cheerfulness while it restrains dissipation, promotes gravity while it dispels gloom, cultivates a noble and manly devotion, not a dismal superstition and is not less distinguished for all the social virtues, than for a devout and dignified discharge of every duty which we owe to GOD.

Religion ought thus to be made engaging and respectable by the liberality as well as purity of manners with which it is associated. If the general duty of parents is comprehended in promoting as far as is in their power, the happiness of their children, no obligation can be more weighty and important than that of cultivating their hearts and regulating their manners, by the principles and habits of virtue. Taking in the whole of human life in one view, virtue is, the surest basis of

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its happiness. and when we look forward to a future and immortal being. in which they must exist either in suffering or in joy. according to their moral characters in this world, no moral obligation can be of equal importance. inasmuch as virtue is the only principle by which they can avoid eternal evils. or attain eternal felicity.. Some writers influenced chiefly by their antipathy to certain principles of religion in which they had themselves been educated, and the impression or the fears which it had cost them much pains to efface from their minds, have run into the absurd extreme of maintaining that all moral and religious instructions given to children and youth are pernicious. they file the minds. they say. with prejudices the more difficult to be eradicated because they are fixed there, by the slavish force of superstition. The mind in their opinion ought to be left free and unembarassed by any early prepossession to form its own principles.

But what principles can children and youth form without the aid of instruction. These writers seem not to have recollected that the young mind must always be necessarily affected with prejudices of some kind while reason is not yet sufficiently matured, to form a sound judgement of the opinions and examples which are continually presented to it. If it is not instructed in the principles of morals and religion, it will naturally receive its bias from the sentiments and example of its companions. or ignorance will become a soil in which superstition or vice or both will probably plant themselves. A moral and religious education altho' it may be blended with many errors, is infinitely to be preferred to those accidental and commonly vicious impressions

sions, to which uninstructed youth will be exposed in their casual intercourse with Society.

With regard to the provision which a parent is in duty bound to make for his children at his death, or at any other period at which they are about to ~~[illegible]~~ establish themselves in the World, it is necessarily affected by so many circumstances that few precise and definite rules can be prescribed concerning it. There is seldom any want of a desire to accumulate a fortune and to provide for the decent and honorable introduction of Children into the world. But this desire so natural is often defeated by ostentation, by the love of pleasure and even by avarice.----- Among the first considerations of duty then to a prudent parent, should be the application of that due degree of industry in his profession or calling whatever it may be which will render him & his family as much as possible, independent on the untoward accidents of the World. But a consideration of not less importance is such a regulation of his expenditures, and such an economy in his stile of living as will not accustom his children to indulgencies and naturally create expectations of a future establishment in life, which in the ordinary course of things, there is no probability of being gratified. Few disappointments and few sufferings are so hard to be borne by men in general, as being deprived of customary enjoyments, to which all their tastes and habits have been formed and being thrown down from that rank in society, in which they expected still and have been accustomed to move. If a parent has it in his power to make a liberal provision for the establishment of his children, it is inconsistent with his duty capriciously or merely from dislike to all

them

them off from their reasonable expectations on his fortune. But if a child is undutiful, extravagant, dissipated and will probably only waste his patrimony, it will be the proof of a wise and prudent affection to limit him to a decent competence and so to secure the principal from which that competence is derived, that it shall forever be out of his power to alienate or consume it. On this subject it may be laid down as an universal maxim in that it is dangerous to the virtue and happiness of a young man to be nourished in indolence and pleasure. The dissipated and idle introduce the most pernicious maxims and the most injurious examples into society. whatever fortune therefore a man may possess, a just consideration of his duties as a parent which under a republican government can be never separated from the duties which he ows to the state, and to society, should lead him never to place a son beyond the necessity of exerting his own talents. A daughter should possess such a decent competence according to her rank, her expectations, and the previous habits of her education as to support herself in an unmarried state if necessary with dignity. It is laudable in parents during their life to assist the lawful enterprizes of their children, but no rights of primogeniture, however necessarily they may be established in a country of Nobles, should exist in a democratic republic. If any discumination is to be made in the distribution of a parents fortune it should only be in favour of the most infirm.*

* It is for this reason that in several agricultural countries, in which the simplest forms of society have existed, the elder sons received their respective portions of their fathers fortune during his life-time or at his death from other parts of his property, but the paternal mansion usually passed to the Youngest Son.

End of Lecture, 3rd.

LECTURE 4th.

Rights of Parents and Duties of Children.

Some ancient nations invested parents with extreem tyrannical powers over their children. The Romans in particular in the first ages of the Republic made every Father a supreme magistrate in his family and clothed him with the power of life and deaths. This was an egregious abuse of the dependencies of children. No man derives from nature a right to make himself the occasion of existence to others only to render their miserable. If he has called him into existence, for his own pleasure, it is his duty to render that being happy as far as the situation which he holds in Society and the circumstances in which he is placed by divine providence will enable him. The rights of parents therefore spring entirely out of their obligations. Obligations imply the authority and power necessary to carry them into execution. If it is the duty of a parent not only to provide a reasonable maintenance for his offspring during their infancy but to teach them to maintain themselves comfortably in future life; if it is his duty by a prudent education adapted to his circumstances to prepare them to be useful citizens, to cultivate their minds in virtuous sentiments and to form their habits, he possesses by the law of nature, the right of controuling their actions and directing their pursuits as far as is requisite for the attainment of these ends.

In the age of levity and inconsideration, and before their reason has arrived at sufficient maturity, to govern their conduct with prudence, if they cannot by mild and persuasive means be induced to apply to their duties, he possesses and should exercise the moderate power of coercion. Coercion however as it always has in view the good of the child, ought

ought never to be exercised to gratify a parent's passion or caprice: but from a sense of duty and with the greatest calmness and dignity, so as to produce in the mind of the child, if posible a perfect conviction of its reasonableness and necessity. Barbarous corrections which are always useless and generally pernicious are not justified by any rights which nature has conferred on the parent. The utmost punishment to which his lawful powers extend is cutting off an incorrigible child from the privileges and advantages of his family. But to sell his child into slavery, to execute upon him a capital punishment for any real or supposed offence, is abhorrent from all the feelings of nature. During the minority of the child indeed, when his judgement is immature, and his inexperience renders him incapable of consulting in the best manner for his own interest, the parent if he be in that situation of life which makes it necessary that he should gain his living by the exercise of his talents, may chuse a profession for his infant and require him to give his diligent attention to acquire a competent skill in it that he may be put in possession of a resource for his future maintenance. He may with the same view bind his infant out to service for a limited time.... But the benefit of the child can never require, and therefore no pretence of this kind can ever justify his being sold to perpetual bondage. We may lay it down as a general rule that whatever unnecessarily opposes the happiness of a child is not within the rights of a parent. Neither ought he to consult the wealth of one branch of his family at the expence of the feelings, the comfort, and the reasonable expectations of the other. * See next page.

The Duties of Children.

Nature lays the foundation of the duties of children in that strong and instinctive affection which attaches the parent to them and which consequently both requires and prompts on their part some correspondent return of attachment and love to the parent. But this principle is greatly strengthened by the tedious imbecillity and dependance of children on the parents care. Habit augments the force of the affections on each side. Every pain endured for children, every solicitude called forth by their wants and dangers, every care bestowed upon them, their protection, their provision and education, cultivate and increase the parental affection and demands the liveliest return of filial gratitude and duty. During infancy. that is during the immaturity of reason and bodily powers, as it is the duty of a parent to provide for his child an education correspondent to his circumstances and to his future prospects in life, this imposes on the child during that period the reciprocal obligation of implicit* submission to the will and direction of the parent.

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* The violation of this rule is chiefly seen in the unreasonable and mercenary oppositions made to the wishes and happiness of children in the connections of marriage. All interferences on this subject beyond simple remonstrance ought to be chiefly precautionary. after the affections of young persons are engaged, they are commonly useless & arbitrary and cruel. It is frequently seen also in the unequal distribution of the parents' estate for sake of keeping in one branch of the family the dignity of the family name. This latter however is an institution so congenial to the spirit of monarchical government, that in states of this kind, the natural in some degree ought to yield to the influence of the political law.

parents of aiding the parent when that is necessary in his labours for their common benefit, and of applying his powers both of body and of mind to such attainments and pursuits as the riper wisdom of his parent shall point out for his benefit. It is peculiarly his duty who has been the subject of such fond solicitudes and unwearied cares, to fulfil as far as in his power the reasonable hopes and wishes of his parents with regard to himself and to reward all their anxieties by that delicious pride which must swell their breasts on seeing them do well. A dutiful and generous son will ever feel the noblest and tenderest pleasures in rendering a parent happy. He would esteem himself unworthy and base if he should unnecessarily thwart his views or wound his feelings. Such a son will delight to relieve his infirmities, to soothe his sorrows, to sustain and console as far as is possible his declining years.

The Persians by law compelled children to maintain their aged, infirm and indigent parents: a dutiful child needs no other law than his own heart. All these duties are so conjoined with a wise and virtuous education on the part of the parent, that if this is neglected, he loses much of his claim to the affectionate submission and obedience of his child. It is an education in good principles and habits, which forms the strongest and most endearing ties between parents and children. Savages therefore, among whom little education is required, have a very faint perception of the filial duties. If men like the inferior animals were independent on their parents almost as soon as born, they would not be perceived at all. And in a dissolute and corrupted age, when men are too much devoted to their own enjoy-

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ments and too little sensible of the value of good early habits and principles and have neglected the proper culture of the minds and hearts of their children and have even exhibited to them only vicious examples, the children soon learn to repay them with indifference and ingratitude. And after the age at which the passions unfold themselves usually regard them as mere instruments to furnish the means of their own pleasure. An education in good, sober, industrious, moral, religious habits and principles conducted with prudence and fidelity, is of the utmost importance towards forming a spirit of filial duty and securing its exercise in all the various situations in which children can be placed to their parents in the course of life, and filial virtue resting on this foundation seems to be the basis of all other virtues. These reflections furnish the true interpretation of the 5th commandment of the decalogue, with the promise annexed to it wh has often been so little understood. "Honour thy Father and Mother that thy days may be long in the land, which the Lord thy God giveth thee." This promise was made to Israel as a community, and is founded on the certain and moral course of things in the World. Virtuous and regular families form the public order and virtue, as public virtue is the surest principle of National prosperity. These are all to be formed in a pious and well directed domestic education, and in filial duty and obedience which is the natural consequence. As long as the families of Israel, and it is equally true of every other nation, should preserve their domestic virtues pure, while a proper education and discipline should be maintained in their houses and the youth of the nation remain modest, docile and dutiful, so long

long they should continue to flourish as a people in the land in which God had planted them: for so long would continue to flourish in their riper years, those virtues on which the prosperity and stability of states chiefly depend.* There are few circumstances in the United States, which forebode greater evils to our civil and political interests, than that defect in the instruction, government and subordination of children in their parents' houses which prevails over the greater portion of them, that want of deference to age, that self confidence and unconsciousness of the ignorance of inexperience, that positiveness of opinion and yet superficiality of enquiry, which are said to distinguish the South of America from those of

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* Nothing can exceed the care and attention of the great legislator of Israel to have all the children of his nation perfectly instructed in the knowledge of their religion and of all their duties as citizens as servants, and to establish in every family of Israel, such a faithful course of education and discipline as would most effectually secure this end. After having made up that wise and extraordinary code which embraced the whole compass of their religious, civil and moral duties, he strenuously and repeatedly enjoins upon them, this care in the education of their families. "And ye shall teach them to your children, when thou sittest in thy house and when thou walkest by the way, when thou liest down and when thou risest up: and thou shalt write them upon the door posts of thy house and upon thy gates." And for what purpose was all this care? For the same expressed in the commandment first quoted. That your days may be multiplied and the days of your children, in the land which the Lord sware unto your fathers, to give them as the days of Heaven upon the Earth. Evidently implying, that if they should continue, to maintain this holy care in the education of their families, and their children should grow up under this culture, dutiful and pious towards God, and their parents, their existence and prosperity as a nation should be preserved, while Heaven and earth endure.

all other countries.* The duties of children do not cease with their dependance. The remembrance of a thousand obligations, and a thousand endearments, will last thro' life. The filial affections strengthned by time, reflection & experience in the breast of a generous and dutiful child, will display themselves in innumerable and nameless delicacies, attentions to the wishes, the enjoyments, the necessities and even the infirmities and imperfections of parents especially in their declining years, which it frequently happens, that having lost the greater part of their friends and their relish for most of the enjoyments of life, they find no other consolations but those of religion and the affections of their children.

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* The discipline maintained over youth in most of the states of Antiquity, the modesty of youthful manners among them, would be prodigies in our country, if not in our age. See Xenophon's account of the Persian institutions: The picture of Spartan manners and education drawn by the Abbe Barthelemi, and Livy's history of the manners of the primitive Romans. Pythagoras who borrowed a great part of his institutions and doctrines from India established in his school, a noviciate of seven years silence, in which his disciples were only to listen with a respectful attention to the precepts of their master and to practise the lessons of submission and obedience which he prescribed to them.

End of Lecture 4th.

W C Jarvis

xxxx justly be made a slave and that one can rightly can morally beta
xslave xxxbeg xto be under civil governments extremely defective and corrupted.
Barbarous dealing cannot be just. Where men however are found already
in a state of slavery as on the case with blacks in the southern
states of America, it becomes a nice question on point of morals what
is the conduct that ought to be observed towards them. No nation is
obliged to set free its own slaves to its own injury, who have become
slaves without its fault. The wisdom of the legislature therefore
upon this subject will be obliged to combine two important views
which are very difficult to be united, the safety, peace and order
of the state along with justice to the oppressed.

End of Lecture 20th

W. Lucas Wright Oct. 18th 1805.

LECTURE 21st

Of Blitical Philosophy or the Philosophy of Legislation.

Having thus far taken a cursory view of philosophy on the constitution and principles of human nature, of Ethics, of Natural Theology, and of Economics, I proceed now to a consideration of those general principles, which relate to men in a state of civil society and which form what may be called Political Philosophy, or the Philosophy of legislation. This may be divided into three parts. The rules which ought to regulate the conduct of men towards one another in a state of society and the means of enforcing these rules, The rules or principles that give a form to society itself and that direct its operations: and finally The rules that should govern the conduct of independent societies or states towards one another. The first make up the science of jurisprudence, The second politics, And the third constitute the law of nature and nations or as it is sometimes called the science of public law.

Of Jurisprudence.

The rules of conduct of man towards man in a state of civilized society must be founded on his rights either from nature or conferred on him by the society. Of Jurisprudence therefore consists of two parts. The first ascertains and defines the rights of men in civil society. The second relates to the defence of those rights.

Of Rights

A right is the just claim which any person has to the free use and full possession of a thing which no other person can justly use possess or change without his consent and which may be maintained or defended by force or by any other means that may be at once

~~any and~~ effectual for the purpose. Obligation is the correspondent term to right. When any man is possessed of any right, it is the duty of other men, or, they are under obligation, to respect it. So that ascertaining the rights of men in society is prescribing to citizens a rule of conduct towards one another. Wrong is the violation of any right and the law of defence relates to the preventing, the repelling, or the repairing, of wrongs.

Division of Rights

Rights may be divided according to their degree, their objects, or their sources, In the first view they are perfect or imperfect alienable or unalienable. In the second they are personal or real. In the third they are natural or adventitious. Perfect rights are such as a man may use force to maintain or defend either by himself, or by the tribunals and executive power of his country which in society are usually substituted in the room of personal force. Such are the right to life, the right to personal safety, the right to property. Imperfect rights are those to which a man has a just claim, but the obligations of duty resulting from them he cannot compel others to fulfil. as examples. a parent has a right to dutiful submission and a grateful return from those whom he has nourished and educated. and if necessary to provision and protection from them in his old age. Children have a right to nourishment and protection and proper Education from their parents who have been the cause of their existence. The poor who are unable to provide for themselves have a right to assistance and comfort from such as have it in their power to aid them.

yet

yet if these rights are withheld, compulsion can seldom be used to force them. The reason is that they are commonly so vague and indefinite in their limits, that it is difficult for human tribunals to take cognizance of them, ~~They are~~ however and dangerous to permit a man himself to be the judge of them. They are however not less obligatory on the conscience than the perfect rights. The laws of religion therefore can also prescribe in their full extent, the duties that result from them and add to them an effectual sanction. Civil laws relate only to perfect rights. Though the Persians are said to have had a law to enforce the duty of children to their parents. Alienable rights are such as can and may be lawfully transferred to others. Such are the rights which men have in most kinds of property. But if property be limited by Contract or conveyance to the person occupying it or to be made to depend on any personal condition then it becomes unalienable. Unalienable rights are those the possession or use of which cannot or ought not to transfer to others, such as the rights of a magistrate in his office, the rights over our own life. Some writers have rendered civil liberty among the unalienable rights of men. But I apprehend with more zeal than truth, Rights as their objects vary were said to be personal or real. Personal rights relate to such things as constitute the nature and well being of a person. And in the eye of the civil law persons are either natural or artificial. Natural persons are individual men, artificial are corporations or bodies politic. The personal rights of the former respect the safety the preservation and proper use of their constituent members and faculties either bodyly or mental those of the latter respect the integrity and preservation of their members their forms and their laws. Real rights relate to such things as constitute the external estate of a man. the exclusive use of which he

he may justly claim. They may be refered to two principal heads property and power; and are the same with those that will afterwards be mentioned under the claſs of adventitious rights. Some writers add to these heads posesſion. But posſesſion is only a transient property arisising from and continuing no longer than actual occupancy and use. Thus in a common a man has the right of posſesſion or property in that part of it in which he is actually pasturing his cattle. A fisherman has the right of posſesſion in that part of a river or lake which he occupies by his seine and the barbarous and savage tribes in those unappropriated Territories which they occupy in hunting or the actual range of their flocks. The next division of rights and the last that I have mentioned is according to their sources natural and adventitious. Natural rights belong to all men independently on any compacts or conventions of Society. Of this kind are those that have been already mentioned under the title of personal rights. A man has also a natural right to property as far as it is the product of his own skill or labor. And a parent has a natural to power or command over his infant child. But all other instances of property or power belong to the claſs of adventitious rights. Adventitious are such as not belonging orginally and univensally to man accrue to him from different sources in the progreſs of life: but chiefly from the compacts and conventions of society. They refer to whatever may be conferred or augmented by the will of others and by compact with them. They may be comprehended chiefly under the heads of property or the right to permanent and exclusive use, and power or the right to command the service and obedience of other men. It is a subject of importance in the science of Jurisprudence to state distinctly the means by which men may justly acquire the right either of property or power.

Of the acquisition of property.

Property may be acquired in three different ways occupancy, labor, Contract. To these some have added forfeiture because when an injury is done the person who has committed it is bound to make reparation and thereby forfeits or transfers to the injured what had before been his right. This however is only substituting one subject of property in the room of another. It is besides so limited in its effect that it hardly merits to be considered as one of the sources of property.—

The right by occupancy can take place only with regard to those things that were before common or unappropriated; such as the air the running stream or lands that have not yet been parcelled out by express or implied compact among particular owners. In such things each man has a property in that portion of them which he actually occupies. No man can without injury deprive him of the use of it. But as it is impossible for one person to occupy the whole atmosphere, ocean or forest, his right therefore becomes limited to what he actually possesses, and is using. The laws of society however have generally extended the rights arising from prior occupation beyond immediate possession and use, to what will be convenient for the purposes of society. Convenience also by an implicit compact of nations, and in some instances by explicit convention is made to regulate their rights of use or property in seas, rivers, bays, and newly discovered lands which without such convention would be common or only appropriated so far as actual use and occupancy extended.

Of Labour.

Labor forms another title to property. It is an exertion of our industry and talents by which a thing is discovered that was not known before; fabricated that did not exist before or receives augmented value. The rights by this mean are necessary results of the natural right which every man has to the use of his faculties and the enjoyment of their fruits. The productions of a man of genius is his property and he may employ or dispose of it for his own benefit. The work of hands forms a property if it be employed on a subject before unappropriated or an appropriated subject with the consent of the owner. But if such labor be employed on an appropriated subject without consent of the owner it cannot constitute a property for the labourer. His labor is labor lost in as much as it ought not to change the original property of the subject. If the effect of a man's labor be of such a nature that it may be separated from the subject which is the property of another without injury or detriment to it, he has a right to remove or enjoy it for himself. If the other will suffer detriment by such removal or enjoyment, then he whose property the subject originally was, must be permitted to enjoy the whole benefit of the labor. Any change of this rule must be by consent of the proprietor. Property that does not accrue from labor or from prior occupancy is the result of contract or convention, the forms of which are generally prescribed by the laws of society. All property except that resulting from prior occupation of unappropriated subjects may be considered as founded in labor. It is a labor, that gives the principal value to most subjects. Property derived from contracts is usually the exchange of one species of labor, for another, and that which

accrues

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Graduated	Proprietors	Place of residence	Society
1806.	John Croes	New Brunswick, N. J.	F. A. W. S.
1807.	John Lindsay,	New Brunswick N. J.	F. A. W. S.
1808.	Robert Ludlow	New York. N. Y.	F. A. W. S.
1809.	Franklin Anderson	Maryland	F. A. W. S.
1810.	John J. Stoddert	Maryland	F. A. W. S.
1811	John J. Griffith	Burlington, N. Jersey	F. A. W. S.
	John McSherred	Mansfield N. Jer.	F. A. W. S.

accrues from divises or gift is only the transfer; without an equivalent, of things, that have been renaired valuable by the labor of others. In the next lecture we shall proceed to the consideration of contracts.

End of Lecture 21st

Wm. Crocs scripsit Oct. 19th 1805.

LECTURE, 22nd.

Of contracts

A contract is a promise any how made by words or signs calculated and designed to excite the expectation of another to whom it is made, of the performance of some service or the transfer of some right. It has been made a moral question Whence the obligation of a promise in conscience arises. I say in conscience because the civil law will compel the performance of a contract made in due form. Some have referred its obligation to the authority of the moral faculty: and others to the convenience of society. Both principles perhaps ought to be taken into view. It is necessary to the order and happiness of society that men should be able to rely on the veracity of one another. And probably in order to promote this end, our creator has implanted in man a natural and original sense of the obligation of truth. So that in breaking a promise, we violate the dictates and incur the reprehension of conscience, and at the same time the disorder and unhappiness that would arise from permitting a general dire-

direction of truth in our intercourse with the world increases the guilt of every particular departure from it. When a contract is made, the object of it may be considered as forming a part of a man's estate or property. The violation of it therefore becomes an injury that may justly be prevented by force, or punished by some kind of retaliation. In the formation of contracts the following principles may be laid down.

1st. Contracts should regard such things only as are both possible and lawful.

2nd. To constitute a contract, it is necessary that there should be not only a promise on one side, but acceptance on the other; or; a mutual promise and mutual acceptance. For when there is no expectation or reliance created, which cannot be presumed when there has been no acceptance no injury can follow and the fulfilment of the promise cannot justly be exacted.

3rd. A contract may be made by signs and actions, as well as by words, if they are such as are calculated, and evidently intended to excite the expectation of another. ---- 4th. A man may stipulate in his own person, or by an agent whom he has deputed and authorised for the purpose. He is bound even by the agreement of a servant, in such affairs as servants usually transact, or in such as he has been known repeatedly to trust a particular servant.

5th. A contract is made in words; these words are to be interpreted according to their usual significations or according to that sense in which it will appear from other concurrent circumstances that they were intended to be used.

6th. A custom when it is generally received and known, may be the ground of contracts. Though they are not formal and explicit, they are implied and real. A parent sending a child to place of education, by that act, binds himself to comply with all the customary rules of the institution. A great part of our conventions or compacts in society rest merely on the cus-

toms

tions of the country. ..... 4th. As the obligatory force of contracts is derived from the expectations that have been reasonably raised, no contract can exist or have any force with persons insane or who are under guardianship, or from any circumstances have not a full will of their own or an independent right to execute the stipulations of a contract. In these cases no expectation or reliance can justly be supposed to be created.

Of the Distinction of Contracts

Taking contracts generally they may be divided into absolute and conditional. single and reciprocal.* Conditional contracts rest the execution upon some condition, some event that is to take place or some service to be performed. Absolute contracts are ~~expressed~~ expressed without any such limitation. Single contracts which are sometimes called gratuitous, contain the promise or the obligation to confer a right, wholly on one side. On the other side nothing is expected but the acceptance of the party. Reciprocal contracts imply obligation and promises on both sides.

Contracts may likewise be distinguished more particularly as contracts of sale—Of hazard—such as that useful species—contracts of insurance, or that dangerous one of gaming—Contracts of lending, particularly money upon interest—Of commissions of different kinds—Of services of partnership &c. Concerning all which there are moral disquisitions and rules, and legal provisions, which it would be too tedious to detail in this place, and with which you must become acquainted in the course of your future reading and experience.

Of exceptions to Contracts.

* See Fergusons Inst. 180.

There are ~~four~~ some just exceptions to the ~~variety~~ validity of contracts, When fraud or when unjust force has been used to obtain them, Or when they respect things impossible or unlawful in their nature. Fraud is any deception employed by one party to surprise a promise from another; it invalidates a contract, for two reasons. In the first place, because deceit itself is an injury and requires a reparation, instead of reward, and in the next place, because there can be no just expectation raised in the party deceiving that the other will fulfil a promise insidiously obtained when the imposition shall be discovered. Stratagems of war however do not come under this exception. Nor will the falsehood or deceit of a third party invalidate the obligation of a contract made with one who is innocent or unknowing of it. Unjust force is any violence or menace employed by a person who has no proper authority to extort from another a promise of advantage. Such a contract is void for the same reasons with those that operate in the case of fraud. Force is an injury and cannot raise any reasonable expectation that the fulfilment of the promise is designed. But the laws may compel one citizen to enter into an equitable contract with another and the stipulation in that case shall be binding. The exception likewise does not reach the case of independant nations. For between them conventions are obligatory although extorted by force or fear. Contracts are void in the third place when they respect things in their nature unlawful. The laws of virtue, justice temperance, chastity, are of prior obligation to all contracts. Every convention therefore is essentially void which would oblige any party to infringe any of these duties. It is void finally if it respects things impossible, in their natures. If the impossibility

ibility is known at the time of contracting to both parties it is an act of madness if to one it is an act of fraud. If it was wholly unknown or arises after the contract is made the contract indeed is void, but the parties are exempt alike from folly and from criminality.

Under the head of contracts is usually considered the obligation of truth in narration and discourse in general, as well as in promises; because all speech, it is said, contains an implicit contract with those whom we address, that we will utter nothing but truth. There [redacted] is however no need of this fiction, to establish the obligation of veracity. It rests upon the same foundation, with the obligation of contracts, themselves that is the sentiment and approbation of truth, the contempt and disapprobation of falsehood implanted in us by nature, and its necessity for the interest and happiness of society.

It is a question in morals wherein a lie consists, and whether every falsehood be unlawful? A lie is any departure in words from the reality of things, made with an intention to deceive. It is an equivocation, in which the literal and grammatical meaning [redacted] of a sentence, is different from its customary and popular sense or from that sense in which it is known and intended that the sentence should be taken. It is an action which conveys a meaning calculated to deceive, as in that villainous decoy practised by some english armed vessels in the late war, hanging out signals of distress, by which they allured some merchant ships into their power. It is an omission of a material circumstance in a narration where we profess to relate or

others

thers have a right to demand, the whole truth. The essence of a lie consists in the intention to deceive; therefore, where no deception is supposed to be operated, as in parables, fables, customary compliments, the common practice of a prisoner at the bar, pleading not guilty no falsehood can be imputed. —

On the second question whether there be not any occasion which can justify a departure from truth, many circumstances have been stated, and many delicate situations have been imagined, in which falsehood has been supposed to be innocent and even laudable. And others in which it is difficult to give a precise and even definite answer. Examples are, lies told to the sick to support their spirits and assist their cause, to a madman or robber to divert him from a dangerous purpose, and prevent him from doing any injury to ourselves or others — To company, in order to excite mirth at their credulity or disappointment. This last though often practised and commonly justified is at least doubtful in its morality. Thus much we may say with certainty, that any man who frequently condescends to such artifices degrades his character and so far is criminal. With regard to the other examples we may lay it down as a general rule that as the virtue of actions depends in a great measure on their utility. Wherever the benefit of the immediate consequence of a departure from the truth evidently exceeds the evils of its remote consequences, as a common principle of conduct, in such cases but in no other can it be justified. Some persons have a constitutional tendency to excess in narration, ~~and others~~ and others an acquired habit of exaggerating in relating

relating whatever is expected to interest or surprise. Such men soon lose respectability and credit and are guilty of vice by deprecating themselves. This a defect in character that has been found to be almost incurable. A great part of the world are prone to make some additions to the Histories which they relate, so that in passing from one to another they are frequently enormously magnified. This has been found by experience to be attended with so many ill consequences especially with regard to slanderous anecdotes that it is a vice of much greater magnitude than appears at first view. And it ought to be laid down as a sacred rule of practice, never to suffer our imagination or our passions to color, or to add in the smallest degree to what we have heard. It has been enquired how far deceit may justly be used towards an enemy. Enemies in the actual prosecution of hostilities have no right to expect true information. In that case all the deceits of feints, false colours, spies, false intelligence &c. [redacted] are justifiable. On the other hand as no deceit can be warranted in what affects the happiness of mankind, Propositions, or signals for truces, for capitulation, for pacification, or whatever tends to terminate, or mitigate, the calamities of war, ought to be made with the utmost sincerity.

Having made these observations on the nature and obligation of truth as an appendix to the doctrine of Contracts, I shall now make a few reflections on the foundation of property in land, and the general rights of mankind to parcel out in property among them the earth and the inferiour animals. Property in land rests on a different foundation from that which is acquired by contract, or

or by labor. The earth in its original state like the ocean or air is common. Every man has a right to use it for sustenance and no man can claim to hold to a greater extent and for a longer period than that of his actual occupancy. When numbers of men all having equal rights in this respect attempt to exercise them they often interfere with one another. After they have become too numerous to hunt on a certain territory with advantage and without personal contests, they may either agree among themselves to relinquish their general wrights to the use of the soil and throw them into the common stock to be divided among them according to common convenience, or they may entrust that division to those, to whom they have committed the exercise of their civil government. In either case the law of the land becomes the foundation of the property of the citizens in bounded portions of the soil, convenience is the rule that governs this law and the rights derived from the will of society which are limited and definite are substituted in the room of those derived from nature which are general and indefinite. The tenure of landed property is different in different countries and whatever the original partition of the soil may have been it usually becomes greatly changed in time by contract, devise, and all the means of transferring property established in society. The right of dividing inferiour animals in property, and especially for using them for food, rests on different principles. The right of using them for service, arises from the labour and care of man, in taming them, and providing for their

their defence and nourishment. If this foresight and care enable them to live in more security and comfort, than they could in a wild and untamed state, it is but just that he should enjoy their labour, their milk, and their wool. But how shall we justify the use of them for food. That is inflicting pain and death upon sensible beings, by an apparent cruelty, from which the feelings of humanity, at first, recoil. To this we may answer, that it is evidently the order of nature, that one animal should live upon another. However difficult we may find it to reconcile this order to the goodness of the Creator, such is the fact, and man has certainly a right from this source, at least as good as, that of any other animal. To this it may be added that life is valuable, only in proportion as it is comfortable. If then the life of inferiour animals can be rendered more comfortable, and be in general even prolonged, and if death that must overtake them at last, can be rendered more easy by allowing man the right of using them for food, the objection of cruelty is taken away, and the fact is, that greater numbers of them come into being by human providence and care, than could exist without it. They enjoy that being more agreably by being better provided with food, and better protected from the animals of prey and when necessary they die at last more easily by the knife than by disease, or by any other beasts, which is the order of nature. These principles with regard to property in general, I shall conclude with a few observations. The property of individuals under protection of the law, is inviolable. The society

however,

however has reserved to itself in the original distribution, certain rights for the common good, which in some cases seems to limit this inviolability, or absolute property; E.G. it may lay out ~~roads~~ roads, cut canals, establish ferries or bridges, across rivers, for the public interest and convenience, and in doing these acts it may take the property of private citizens, making them an equitable compensation; because as property is rendered secure and valuable only by the will and power of the public, the public has a right to derive advantage from the property of the individual. On the same principle rests the right of taxation, or a claim to a portion of the fruits of each man's labour, for giving an augmented security and value to the remainder. Hence also the public has a claim for the general benefit of the minerals, medicinal springs, and other things that cannot be exhausted or impaired by using them. It has a right likewise to useful inventions, and discoveries on giving for them a liberal reward: because although the inventor or discoverer has a natural right to the use of the fruits of his own talents, or good fortune; yet it is the power the order and the commerce of society, that render them valuable to him. Some limit is put to the inviolability of property, also, by what are called the rights of necessity. Among these are the right to destroy the property of another when this act is necessary for our own preservation. The right of a man ready to starve with hunger, or to perish with cold, to take the first food, clothes, or shelter, he can find. The right to destroy a house in the way of destructive fire, in order to stop its progress; and others of a similar kind. Society was instituted for the greatest common benefit, and in these cases the particular good consequence, exceeds the general evil of the example. The necessity however should be

very

very apparent. But for buildings and other things destroyed in the same way, restitution as far as possible, should be made by the community, restitution not to the full value ~~value~~ of the property destroyed, but to its value at that time, considering the hazard in which it stood.

End of Lecture 22nd.

Wm Broes scripsit Oct. 22d 1805.

LECTURE 23rd

Of Completing a Contract.

Any signs or expressions by which we communicate our intention and lead others to depend upon its accomplishment, so that any injury or painful disappointment would result from failing to fulfil it, is a perfect contract binding in conscience. But to render it complete in law certain forms are necessary which are prescribed by the laws of each country. If the contract is verbal it must be clear and precise in its meaning and authenticated by one or more witnesses. If it be written it must be confirmed by the customary signature either the name or mark of the contracting party or parties, In their a single or beneficial contract by the signature of the promiser or obliger, in reciprocal contracts by the signature of both parties. To these signatures there is usually required the testimony of two ~~or three~~ and sometimes* of three witnesses and besides these by an ancient custom the seals of parties contracting. A seal is

* Vide next page

is some symbol or sign expressive of the objects of the Contracts or intended to designate the person who wears it. If it be a public seal it usually consists of such emblems as the state has chosen to signify the characters and employment of the people, the objects of the government or the authority and power of the community or the magistrate. Seals were originally more appropriated to the persons who used them than they are at present and served more perfectly to designate them. Before the general use of writing they probably served instead of the signature of the name* as those marks now do which are used by persons who cannot write. When writing became more common the seal however still continued by custom to be added. As seals have lost in some measure their original intention so in their emblems, or devices they often departed from their original structure.

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* By the civil or Roman law two witnesses are required to substantiate a claim or to prove a contract. But by the common law of England received in this country one witness is sufficient, except in some cases in which by express statute more are required, as in the statute of frauds which requires that the devise of lands by wills should be attested by three subscribing witnesses. In a few cases the civil law is adopted by the common law such as cases concerning wills, concerning the distribution of estates of intestates and maritime causes (in all which two witnesses are necessary. The same rule in America is adopted by those courts which have been substituted in the rooms of spiritual courts in England as in the court of the ordinary and the orphans court, likewise in the court of chancery and the admiralty court. * The name was written by a clerk or learned man as they were esteemed who could write, and the seal of his mark was added by the contracting party who could not write.

Any impression made by any instrument and sometimes a mark made in a particular way with a pen and annexed to our name serves the purpose of a seal. This annexation however is sufficiently significative.[X] and as those things which are closed and bound up are for the greater security usually sealed, so the addition of our seal or of any mark in place of a seal implies that we are bound and solemnely pledged for the fulfilment of the contract: Oaths which are an appeal to God for the sincerity of our purpose, and an implication of his judgements if we fraudulently fail to fulfil our promise, were anciently much used in ratifying our contracts. They were accompanied, frequently with other memoriales; such as mutual gifts, festivals, erecting of pillars; with other ceremonies, to give them significance and solemnity, such as raising the wright hand to heavens, or touching an altar, or with other acts of religion, such as offering sacrifices, libations, invocations. The Grecks often divided a lame, which was intended for the altar, with the sacrificing knife, and the contrasting parties passed between the halves; hence came the phrase ΤΕΜΝΕΙΝ ΑΞΙΟΝ. The Latins, from knocking down the victim before the altar, had a similar phrase, ferire pactum. From whence we have borrowed ours, of striking a bargain. Oaths were the more necessary anciently in forming contracts and conventions of all kinds, public and private, because writing was less known; the scince and the form of jurisprudence were very imperfect; and occasions more frequently happend of entering these compacts between civil and independent parties, not amenable to any common tribunal, from there being so many petty princes or heads of independent familie

[X] yet our law requires a specialty as it is called in contradistinction to a simple contract to be sealed not merely with the mark of a pen but with wax or wafers and to such specialties some advantages are annexed that do not legally belong to simple contracts either verbal or written.

families, or clans in the neighbourhood of one another. In modern times, and in improved societies these means of ratifying contracts are less necessary, and consequently less used.* A vow, which is in some respects analogous to an oath, is the expression of a contract or obligation, under which any individual voluntarily chuses to bring himself to GOD. Few vows are required by rational religion; A man should be very cautious and deliberate in making them, but when made should sacredly fulfil them. Civil society has no concern with them. They are transactions solely between GOD an the individual.

Of Rights of Command or Services.

Jurisprudence, it has been said, relates to the rights of men, and the modes of ascertaining and acquiring them, and in the next place to the means of defending them. I have considered their personal and their natural rights. I have divided their real and adventitious rights into those of command or service. I have considered property and the justifiable ways of acquiring it particularly by labour or the active application of our faculties and by contract. I come now to make a single observation or two on the rights of commands or services. The right to command or rule others or to require any service from them can be acquired only by contract, or by forfeiture. In some instances men may forfeit their liberty, and independence by their own injustice, and become bound to repair by subjection, and service, the wrongs, and injuries they have committed. But in general, a right to service is the result of a reciprocal contract, between the master, and the servant. This kind of contract is to be regulated by custom and the law

* They are at present used chiefly in declarations of allegiance as an additional tie on the fidelity of the citizen or subject in ratifying engagements for the faithful discharge of offices of trust and importance.

law of the land. There are no rights of absolute slavery but on this subject some reflections have been already made under the head of Economics, or domestic relations, and duties; and some others will be made under the head of politics. I dismiss it therefore at present. The right of civil power and authority is also the effect of compact explicit, or implied between the magistrate and the people. Power that rests on any other foundation, is usurpation and not right. The extent and modification of this power, are different in different countries; they are determined by the constitution, the forms of government the statutes, charters, and prescription customs of each. What I shall say on the social compact, is also reserved to the head of politics.

Of Police.

Jurisprudence relates likewise to the limitation and direction of the rights of men, whether natural or adventitious in such a manner, that the exercise of those belonging to one should not impede, or interfere with, the exercise of those belonging to another. This limitation, or direction, is called the police of a city, or country. It relates to the manner in which arts may be practised, to the convenience of travelling, and passing and repassing along the streets and public ways, to the order of markets, to the time and manner of holding all assemblies of the people, to the conveyance of intelligence, and to the regulation of all commercial transactions. In this last subject the laws of police have their chief operation and effect. The details of police are very minute, and can be learned only by experience. As the objects of this species of law have no natural morality or immorality attached to them but become lawful or unlawful only as they are arranged by the law: men in general have but a slight sense of the evil of violating

violating the regulations of police. These regulations therefore should be made with great prudence, and moderation, should be manifestly for the convenience of all, and the vigilance of the magistrate should supply what is wanting to their execution in the sentiments of individuals.

Of the defence of Civil rights.

The second part of Jurisprudence consists in defending those rights, which nature or the laws have given to the citizen. This defence consists in preventing, in repelling, and in repairing wrongs. And these ends are to be accomplished only by the wise laws and a vigorous administration. The laws may prevent crimes by providing for the good education of the citizens, by protecting and encouraging religion, and by the salutary example of their own justice. Wrongs must be repelled and repaired by an impartial administration of justice, obliging the citizens to fulfil their contracts, arresting meditated, and punishing actual crimes. Men unconnected with one another by any civil or political tie which is usually stiled a state of Nature may themselves repel or punish wrong offered or inflicted by others. But in civil society they have given up the power of righting or avenging themselves into the hand of the civil magistrate, and to the decision of the tribunals established by the law for the purpose, except only in those cases, where the aid of the magistrate cannot be interposed to prevent an injury that is offered; or where the relief afforded by the law is altogether inadequate to the wrong, that is likely to be sustained. When a man is permitted to defend himself; on the branch of Jurisprudence, therefore, which regards the defence of the rights of the citizens,

we are to attend chiefly to the constitutions of the tribunals of justice, to the principles by which they should be governed in pronouncing their decrees, to the evidence of crimes, the design, the proportion and nature of punishments.

Of the Constitution of Tribunals.

The first maxim in the constitution of Tribunals is, that the judiciary power should be wholly seperated from the executive and the legislative. The union of Judiciary with the executive would afford a dangerous opportunity to the prince or chief magistrate to exercise arbitrary government. He, to augment his power by unjust and cruel decisions against all those who opposed his views or were obnoxious to his friends. A vigorous execution immediately following an arbitrary decision would leave no opportunity or hope of redress to the sufferers. But even more fatal to justice and the security of the citizen would be the union of the judicial with the legislative functions. There would be no permanence or uniformity in the law. It would be impossible for them not to mix their passions and prejudices with their decrees. Having all power they would be under no controul. Every decree in judgement would be a new law, or if they should not consider in this light, they would sanction and cover it by a law however cruel and unjust it might be. Decisions would be effected by partialities for or against the parties at the bar; they would vary with the predominant factions in the state of the citizens would have no

fixed and established rule of conduct, a door would be opened to endless litigation and injustice and the people would fear not the impartial and inflexible majesty of the law, but the capricious and contemptible passions of men. But when the legislator enacts the law and the judiciary applies it there is much greater probability of its being impartial and ~~unjust~~.

It will be framed ~~against~~ under a general view of circumstances and not of particular cases, and the interpretation cannot be capricious and variable. By being pronounced by those who had no right to frame or modify the law it must be done according to its strict letter. If its operation being thus confined should sometimes be hard, it will oftener be just. The citizens will at least understand their duty and be able to take care of their own interests by having a known and uniform rule to guide them. They will not be afraid of the Tyranny of any mans passions. The same protection and defence will be equally extended to all.

The next maxim to be observed in the constitution of the Tribunals should be the complete independence of the judges. Being appointed to be incorruptible interpreters of the law they should be subject to no influence or bias such as dependence on the executive or legislative bodies would create. By whomsoever they are appointed their offices ought to be secure to them as

long as they discharge them faithfully. Perhaps the wisest policy in a balanced goverment is to make their appointments depend upon the executive departments, and their removal on the application of the representatives of the people grounded on evidence of malversation in office.

Thus having equal reason to respect both branches of the government they will be exempted from any undue influence from either. Integrity and virtue will render them independent on both. To increase their independence their salaries should be ample so as to exempt them from the temptation and even the suspicion of corruption, to invite men of the greatest talents and virtues to the office and to invest the tribunal with that respectability which it will derive from a profound knowledge of the laws and from unsuspected integrity.

In the next place the judges in a free goverment ought to be few. Numerous bodies are not capable of the slow and patient investigation which Liberty demands; they are liable to be influenced and biased by prevalent popular passions and prejudices and responsibility is lessened by being divided. On the other hand in a monarchial government that is not properly tempered by a mixture of republican restraints, the judicial body ought to be numerous. The influence of a monarch over a large assembly is less than over a small one. The ardour of popular

popular passions and even some degree of faction may be useful here to prevent too great servility of power: The parliament of Paris often acted with great independence In a despotic government the judicial department should be associated with the supreme offices of religion That it may overawe the despot himself. In such states the Sultain may trample on the liberties and sport with the lives of his people; but it is always dangerous to touch religion or with a profane hand to insult the sacredness of its ministers.

Another maxim that will promote the impartial administration of justice is that courts and their proceedings should always be open and public: The public eye and the fear of public reproach is a powerful check upon unfair and dishonest intentions. if a judge should be capable of entertaining them. If there should be several concurrent and coordinate jurisdictions in a state they ought all to terminate in one supreme tribunal, to which appeals might be brought if necessary from the courts below. This is necessary in order to confine the jurisdiction of each court, to its proper limits, and to preserve uniformity in the adjudications and consequently in the interpretation of the law. The next article of the constitution of the tribunals should be a

be a provision for a perfect knowledge and interpretation of the law, and an impartial application of it. Where laws are numerous as they must be in all free countries, the knowledge of them becomes a science of great extent and difficulty. It is necessary that the judge or judges who preside in the tribunals for the interpretation of the law, should be profoundly versed in this science. But men in this station have the passions, prepossessions, and the foibles of men. They are prone to feel the pride and insolence of office and to place too great a distance between the magistrates and ordinary citizens. They are liable to a bias in favour of an excessive extension of the power of the executive, from which they have derived their own appointments.

As they enjoy a fixed office the partialities, prejudices or passions which enter into their character, & whatever they may be, will be generally known; they will accordinly be exposed to solicitation and influence applied to their predominant foibles; against which it will not be easy to preserve a firm and unshaken impartiality. To guard against these evils and dangers which are incident to human nature and almost inseparably attached to it, no better institution has been discovered, than that of the Roman judices who were appointed to assist the pretor, or the English jury who were connected in the constitution of the court and in the office of judging along with the establised judges.* These men chosen at

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* The jury which enters into the constitution of the tribunals, by our law determines only on matters of fact; the presiding judge or judges determine

the momentous

ah only for the occasion, and liable to the challenge of the parties, will most probably be exempted from the influence of intrigue and solicitation and from all the prepossessions of the permanent judges. Juries taken from among the people, will feel with them and will be upright guardians of their rights and liberties, equally concerned to defend the innocent because they themselves are liable to accusation, and to punish the guilty, for the sake of general order. Although they are not supposed to be learned in the law they are capable of understanding the law as it is interpreted to them from the bench, and comprehending its application to the case before them.

For such a constitution of a court there is every probability in favour both of wisdom and integrity. A maxim however of the greatest importance to be observed is, that a jury if there are different orders of citizens in a state ought always to be peers or of the same rank of society with the accused, without this condition there would be small hope of impartial justice. The accused would allways consider himsely in the hands of his enemies. I proceed next to state the principles by which the tribunals should proceed in pronouncing their decrees. End of 23rd Lecture.

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determines all points of law, yet a general verdict of guilty or not guilty brought in by twelve jury involves in it a mixed proportion of law and fact and the jury of course are obliged to pronounce on the whole. But they are directed as to the law By the court and if they disregard this direction the court will set aside their verdict and award a new trial.

5th time not read

In the history of legal proceedings in England there have been instances in which three successive verdicts on the same question have been thus set aside. Of the fact therefore is alone to be ascertained by the jury the law is to be pronounced by the judges.

To one danger juries are sometimes exposed. When any popular passion is afloat or when party and faction is rising in a vicinage they will naturally be affected with the same spirit which is in many instances unfriendly to the equal administration of justice: but this danger may generally be obviated by a power properly lodged, of removing any trial to a different county or district of the state, where the same parties and prejudices do not exist. To render the constitution of the court and the defence of the peoples' rights complete, the parties should always enjoy the privilege and have it in their power to employ men as their counsel to maintain their cause, and explain the laws relative to it, who have by time and study made themselves thoroughly acquainted with these voluminous guards of public safety. ,,

LECTURE 24th

Having proposed several maxims with regard to the constitution of tribunals of justice, I proceed to lay down some general principles or rules, by which they ought to be governed in pronouncing their decrees. The great rule indeed is to adhere to the spirit and meaning of the law, or which is the same thing. the intent of the legislator in enacting it. To this all other rules

are subordinate and subservient; their whole purpose is to ascertain the object and meaning of the law with greater precision. The following rules on this subject have been very wisely adopted in the courts of England and America. —

1st To construe the law according to the plain words of it, and to give those words their common, and true meaning.

2nd When the words are not precise, but of equivocal meaning, then in order to discover the intention, the law is to be consulted as it stood before this particular act, and the evil or defect which the Legislator proposed to remedy by it, is to be considered and such construction given to the law if it be not inconsistent with the words, as will best reach this remedy. The title and preamble of the law, often point to its meaning, and are very often resorted to, to explain the enacting clause. —

3rd Whenever a judicial determination on the meaning and extent of a statute has taken place, it should then form a precedent to direct all future decisions on the same or similar points. Even when an adjudication has not been on the very law in question — Yet if it be on the meaning and extent of the same and similar expressions in other statutes it is to be regarded as a good rule to guide the Courts in the interpretation of them. These rules are necessary to restrain the caprices or partialities of the judges with regard either to the parties at the bar or to the subject of the question litigated before them. They are necessary also to prevent the variableness and uncertainty

uncertainty that would attend the decision of the court and consequently the law of the land, if each judge in pronouncing of his decrees were to be governed merely by his own sentiments of justice and equity in the particular case before him. It is true that no human foresight can anticipate all the cases that may arise under any law. The utmost sagacity of legislators cannot prevent their laws from operating hardly, in particular instances. The hardships of some of these instances might be corrected, if the judges were allowed a latitude of interpretation in applying the law, or were permitted to forsake the regular course of precedents, and follow their own sense of equity in each case; But fixed and known laws and an invariable rule of judging are of more consequence to the peace and order of society, than can be the equity and hardships of single adjudications. When the law and the decisions of the tribunals are fixed and uniform all men can conform themselves to them, and many litigations may be prevented. But if the judges are permitted these by their decrees, immediately the justice of the country is involved in uncertainty, no limits can be prescribed to the variableness and contradictions of various decrees; and endless litigation will be invited from the hope, that every man who thinks well of his own cause, or relies on his own artfulness will entertain of gaining or blinding the opinion of his judge. When a law is made there necessarily arises through the defect of human intelligence which cannot foresee all the actions

tions of men, and all their circumstances, some ambiguity of its application to particular cases. This evil is attempted to be corrected in the course of legal adjudication. When a new case arises which is not marked with sufficient provisions in the law, the judges endeavour to give the law that application which is most congenial with its spirit and intention and which combining all circumstances will form the best and clearest rule of legal justice, in all future and similar cases. When a point is then determined, it serves so far to remove the ambiguity of the law, and to form a rule of judgement to the courts in time to come, which rule should be rigidly adhered to, especially if confirmed by repeated adjudications, unless there should be discovered in it some manifest departure from the letter and the spirit of the law, by which it professed to be guided.

New cases invested with different circumstances occur.[a] Hence originate the numerous volumes of reports, with which the jurisprudence of a free country is almost necessarily incumbered. These reports increase the extent and intricacy of the law, as a science, and render it absolutely requisite that the judges should be professional, men profoundly versed not only in legal principles but in reports which are the history of legal adjudications. Hence also the necessity of having the law opened and explained at the bar and the adjudications

[a] These must be decided with the same caution, and when decided become new precedents to govern the decisions of future events.

cations that have been made on cases similar to the one that may be in controversy recited and compared, by men who have made the science generally the study and employment of their lives.

Not unfrequently a considerable embarrassment arises to the court itself from the difficulty of determining under what law or under what precedent a particular case that is variant in some material circumstances from all former examples ought to be brought. Perhaps it cannot be brought under any except by analogy, that is one resemblance in its characters and properties to other adjudged cases. And it may have some analogy, to cases that in themselves are very different from one another and could lead to very different decisions. In quoting and comparing these analogous cases, consists a great part of the contention of the bar, and in managing them dextrously a lawyer displays his ingenuity and skill. The rule of decision to the court will be the aptness, the strength and number of analogies, on one side more than the other. And its wisdom is seen in comparing, and reconciling analogies with one another or in making such discriminations as will save the authority of all the rules alledged in the cause, or in yielding only to the strongest.

Another principle in our courts adopted from the practice in Britain is unanimity in the verdict to be given by the jury. The propriety of this rule does not appear at first view, especially as this unanimity is often by confining the jury and by ~~exacting~~ obliging them to make a certain compromise of opinions with one another. And it is known that an obstinate man by fatiguing his colleagues, can sometimes compel.

jul them to yield to a verdict which they do not approve. The principle of unanimity is on some occasions favourable to lenity in criminal prosecutions and sometimes it induces a divided jury to receive an opinion from the more maturer and better informed judgements of the bench. But perhaps after all, the principle of unanimity, would be better changed for some certain majority. Because the rigid letter of the law is not always real justice, and it is incompetent to juries to determine questions of right. It is sometimes useful in a free state to constitute a tribunal of equity which may correct the errours of law, and as Montesquieu says, "Interpret her design in favour of herself, who always designs the public good and perfect justice to every citizen."

To such an idea of a court corresponds the tribunal of Centumvirs, at Rome; and the courts of chancery and exchequer, in England. The perfect distinction between these courts and courts of common law, is hardly understood by the British lawyers themselves except by a few of the most eminent. It can be acquired only by consulting the best expositors of the English law. As they state the difference to consist chiefly in the mode of proof, in the mode of trial and in the mode of granting relief.* As to the mode of proof a court of equity may administer a purgatory oath to the party concerned in order to reach such circumstances relative to the cause as reth wholly in his ~~knowledge~~ private knowledge. As to the mode of trial, this court may grant a commission to take the written ~~testi~~ testimony

* vide succeeding page

many on oath of witneses who may be in foreign countries or who may be too remote, or too infirm, or from peculiar causes may be unable to attend at the place where the court sits.

*I confess I have not been able to discover the necessity of two seperate tribunals when the whole good effect might be attained by investing the courts of common law with chancery powers.

Of Criminal Jurisprudence.

In order to defend the rights, that is, the safety and property of the citizens the subject that principally deserves our consideration, after that of the constitutions of the tribunals of justice, is the criminal jurisprudence of a country. Under this head I propose to make a few reflections on the evidence of crimes, the design the proportion and the nature of punishments.

Of the evidence of Crimes.

As it is necessary for the safety and prosperity of the citizens that crimes should be discovered and punished [the compelling of the fulfilment of executory agreement; the constitution of sureties Ho vide Blackstone s. com. L.) above] so it is equally necessary for their liberty and security, that no man should be punished till he is convicted of guilt, that is of some action, that is in itself injurious to others; or that is clearly and definitely forbidden by the law. Nor should any man be subjected to any restraint in his liberty before, except on probable presumption of guilt, and then only so far as may be necessary to hold him to trial. Conviction can be justly grounded only upon evidence. Evidence is two fold, direct, and circumstantial, direct evidence consists in the testimony of a witness declaring

his sight or personal knowledge of an action. Circumstantial evidence is made up of such circumstances as usually accompany the act in question, and which happening at the times, and places, and in the combination in which they are said to have happened strongly imply the action.

The testimony whether it relates to one kind of evidence, or the other, is required to be given in the oath or solemn affirmation of the witness; because the sentiment of religion is reasonably supposed to confirm the sentiment of truth, in men, and to afford an additional pledge to society for the veracity of the evidence. The law commonly requires two witnesses ~~xxxxxx~~ at least to attest the same fact in the case of direct evidence; or in circumstantial evidence to attest two or more successive facts in the same train of circumstances which relate to the same action. For though it be true that the testimony of one man of known and tried integrity ought to outweigh ~~that of xxxxx~~ and will in the public opinion outweigh that of many men of suspected characters. Yet as some general rule is required to be fixed and the law cannot estimate the character of men the rule of two has been adopted as the best and safest. One man may be liable to be corruptly practised upon, two are not equally subject to sinister influence; and if they were, it is more difficult to make the stories of two than that of one cohere in a falsehood. To require a greater number of witnesses as was the case among the Greeks and Romans who made

three

three necessary would on many occasions impede the course of justice and defeat the intention of the law.

The character of the witnesses however will necessarily affect the credit of their testimony in the opinion of the court and of course have an influence on the verdict that shall finally be pronounced. The nature of the thing, and the intention of the law, require that the court should have some discretion in this respect especially in favour of the accused. There are some occult crimes that from their nature can seldom be proved by two or more witnesses which notwithstanding the good of society requires to be vigilantly detected and vigorously punished. With regard to these crimes the testimony of one witness when supported by strong corroborating circumstances may become under the guards that the law will provide a sufficient ground of conviction.

Two principles in requiring evidence ought to be sacredly adhered to, in the human laws of a civilized state. The first is that no man should be compelled to give evidence against himself. This would be doing violence to nature, which is always a pernicious rule of conduct in public or private life. It would debauch the morals by offering the strongest temptations to perjury. In the oath therefore administered by the court to obtain evidence this exception is clearly understood to be implied. The second principle, is that evidence ought never to be extorted by torture. This barbarous and irrational method of question, has obtained in most rude ages and nations. It still exists in many of the civilized countries of Europe. Torture has no relation to truth, but only to mans power of enduring pain. On the remaing subjects under the head

head of jurisprudence I shall content myself at present with very few and cursory remarks.

Of the Design of Punishments in Civil Society.

The most perfect idea of justice in punishing, is such as that which we frame of the justice of the Deity. It is the infliction of pain for guilt exactly in proportion to the moral depravity of the offence. But as men are very incompetent judges of the interiour of the heart and the regulation of the world in this view is the prerogative solely of the divine wisdom and power, the penal codes of states can have reference only to the peace and order of community. Crimes are punished by them just so far as the public good is concerned. This is the end of punishment for different offences. If we analyze this end we may say that civil pains relate to the reparation to be made to the sufferer by any crime, to the reformation of the criminal, and to the restraint of future crimes by the salutary example of the public justice. Reparation is the principal object, and reformation and restraint only secondary ones, in the decrees that relate to the fulfillment of contracts, In damages and fines assessed for slander, and for most kinds of violence offered to the person. The reformation of the offender is chiefly in view, and other ends only secondarily, in those punishments that principally consist in solitary confinement: Restraint and deterring others is the end in all capital executions, and in those penalties that consist in public disgrace and shame.

Of the proportion of punishments.

The end for which punishments are inflicted serves in some degree to determine its proportion. The severity of sin pains are not always to be measured by the immediate ill effects resulting to society from any single act but frequently from the facility with which action injurious to the peace and property of the citizens are committed, from the danger of their repetition, and from the necessity and at the same time the difficulty of their detection. For the two former causes we find that the stealing of sheep, of horses, or of cloth from bleaching grounds have been punished more severely by the English law, than many simple felonies which intrinsically are more criminal than these. For the same reason stealing out of a shop is punished with greater rigour than stealing out of a dwelling house. When injuries generally can be guarded against, by a reasonable precaution, there the law is seldom severe in it's penalties; hence violations of trust although among the most culpable and immoral of human actions, are seldom punished with rigour. Yet when trust must necessarily be reposed as in a servant in your family, and no ordinary precaution can defend you, against unfaithfulness, there the penalty again becomes severe. When difficulty of detection is united with the danger of public peace, there it is evident the law should be more vigorous against those who are convicted.

There are certain aggravations in the commission of crimes that are reasonable causes of augmenting the severity of punishments. If they have been repeated, if they are accompanied with circumstances of cruelty, these are proofs of depravity of heart, that is highly dangerous to society, and ought to subject the offender to heavy pains. But combinations, for the perpetration of

tion of crimes are attended with so much greater danger to the public peace, than when the same are committed by individuals, that such combinations merit to be punished with an exemplary justice, and even in gangs of combined villains the law should make a discrimination between the ringleader, or the foremost actors on any occasion, and the rest of the band. Such discriminations serve to aid detection, to break the spirit of union among them and to impose some check both on the combination, and on executing their plans: the difficulty of finding those among them who will encounter greater risks than the rest. Among crimes those that are accompanied with terror to others or with violence to their persons are more malignant in their nature, than thefts or frauds unaccompanied with those aggravations.

Terror and danger to life in the perpetration of offences has such a pernicious effect on the public peace and on all the most valuable ends for which men enter into society that they are deservedly considered as greatly aggravating the guilt of any violation of property or right; therefore burglaries perpetrated at night are justly subjected by the laws to a higher penalty than the same actions committed in the day. Among frauds forgeries have generally the most injurious effect in society; and among forgeries those that effect whatever is used as an ordinary medium of commerce, as bills of exchange or notes issued by banks are more pernicious than those that consist of falsifying bonds, mortgages, and such specialities as are usually transferred from hand to hand and may easily be detected. The highest species of crimes is of

is of those that affect the life of a citizen, as poisining assassination, &c; these have been always punished capitally, by the laws of all nations. Capital punishments have in many, been inflicted also, on many other crimes, but not with equal reason. It does not violence to justice, to inflict equal punishments on crimes, that in their demerits are very unequal, or which is the same thing, to class offences which are wholly unlike, under one denomination, for the sake of inflicting upon them one punishment.

Thus in the English law, and in our own, which is borrowed from it; fellony embraces a long list of offences, that have no relation to one another but the name. These are almost all with undistinguishing cruelty rendered capital; a cruelty which will always have one of two effects; either to interest the compassion of the accusers, the witnesses or the judges, so as to suffer many offenders to escape, who ought for the public good to be subjected to a certain punishment, or to make the people hate the laws, and thus become discontented and dangerous citizens. A great desideratum, in the science of jurisprudence, which has indeed been hardly attempted, is a proper scale of crimes and punishments, and he would deserve well of his country, who should introduce such an improvement into its legislation.

Of the nature of Punishments.

It is good policy to derive the nature of punishments, as far as possible, from the nature of the crime. The proportion between the one and the other, will

by this

by this mean be better preserved. The justice of the punishment will be more evident. Springing out of the nature of the offence, its effect will consequently will be more useful both as correction and example. Crimes may be divided into three principle clases. Crimes against morals; crimes against the public tranquility, which do not directly affect the security of individuals; and crimes that immediately violate the security of the citizen. I do not include among these, offences simply against religion, for although they have entered into the penal codes of almost all nations, they are not properly object of civil jurisdiction, but relating wholly to spiritual ideas. They should be left to the moral and corrective discipline of the various sects. It should be remembered however that by simple offences against religion I do not mean to embrace such attempts, as may be made by enthusiastic or profligate people to disturb the freedom of religious opinion, or the order of religious worship among any denamination. These are crimes against the public tranquility, or the security of the citizens. and as such, are proper subjects of civil pains. Crimes against morals, meaning such as are not accompanied with violence, may be punished by disgrace, by fines and perhaps in some instances by confinement, and labour and by whatever tends to correct the immoral and to repair the evils they have done. Crimes against public tranquility may be punished by imprisonment; solitude exile confiscation, and by all such corrective as are fitted to subdue and tame restless and turbulent spirits. On this subject

in the punishment

just it deserves to be remarked That a great error is often committed of seditious and libellous writings. Such writings are generally grateful to the populace. There is commonly at least a considerable party in the state who are ready to receive them and their authors with favour.

To attempt therefore to raise them to pillories and other public scenes of disgrace, as is so frequently done, is wholly to defeat the end of correction. it attracts the sympathy of their partizans, and the offenders are more gratified by the applause which they receive from them, than mortified by the disgrace inflicted by the law. The laws and the magistrate are both exposed to insult and contempt.

The penalty of the crimes that violate the security of the citizens in his person and property, should in like manner be derived from the nature of the offence, and are a kind of retaliation by which society requires damages that have been done to a fellow citizen, to be repaired or compensated, or refuses security and protection to those, who have deprived others of life, of property, of safety.

The Lex talionis appears to be such an obvious measure of equity, that it seems to me to have not been sufficiently attended to, in the penal codes of moderan nations.

Some of the pains however that would spring from that rule, might be usefully commuted by the consent of the injured party. e.g. the loss of any member by which alone any poor man was enabled to procure his subsistence, might be commuted by obliging the dependent to secure to him, during life a sufficient and liberal annuity for his provision. It is injurious to a state, when the laws make many offences capital. Either the government becomes hated by the people or the public compassion is so much interested for the criminals that many escape. Every criminal that escapes, forms new encouragement to crimes. The law then becomes a lottery, and every offender is ready to count the chance to be in his own favour. The severity of the penal laws, renders it

it necessary to lodge a power of reprieve in the hands of the executive. Perhaps the wisest policy would be to make but few offences capital, and the law inexorable. Punishments it has been said besides reparation have two ends in view correction and example. Capital punishments can serve only the last purpose; correction, is best promoted by solitary confinement. A vicious man cannot bear the reflection ~~that crimes~~ on himself that necessarily arises in solitude. It is one of the most powerful means of reformation. On the other hand public disgrace hardens a villain, and renders his villany more incurable. ~~They demonstrate and promote the decay of virtue~~. Sanguinary punishments are peculiarly dangerous in a republic. They demonstrate and promote the decay of virtue, on which the foundations of the state are established, and they necessarily require her to entrust too much power in the hands of the supreme magistrate. If ever the state is obliged to resort to great severity, as in cases of treason, and insurrection, as few victims as possible, should be subjected to the axe of the law, and the republic immediately return to her usual mildness and lenity. The extent and severity of the proscriptions of Sylla, though made in the name of the ~~s~~public good hastened the ruin of Roman liberty. I conclude with two observations. The first is, it would favour the public liberty, if false and vexatious accusations were subject to punishment. The other is that in criminal prosecutions, the excellence of the trial by jury appears with singular advantage. Jurors have not only the sympathy with the accused which citizens ought to have, whose own liberties are affected by this verdict; but being judges chosen merely for the occasion, and then disappearing, and dissolved again into the mass of the people, they leave not the person of the magistrate but the law only to be feared by the citizens.

End of 24.th Lecture.

LECTURE 25th

Of Politics.

I come now to the second branch of the philosophy of legislation, which is usually denominated politics. It embraces those general principles that relate to the constitution of states, and to the great and public objects of national policy; such as taxation, population, commerce the means of forming the manners and habits of the people. When Solon was asked if he had given the Athenians the best possible form of government, his answer, that he had given them the best they could bear, points to the principle that ought to be at the foundation of this science. It is that no form of government is fitted for all nations and therefore no single institution can be considered universally the best. A wise policy must be relative to so many circumstances of climate, soil, face of the country division and nature of property, ideas and occupations of the people, and even the extent of territory, that a civil institution that should be best for one, might be the worst for another. Yet there are some institutions more favourable than others to equal liberty to the exertion of the human faculties, and to the dignity if not the happiness of mankind. It is fortunate when the circumstances of the people are so combined, as to prepare them such institutions, or when the talents of a legislator like Lycurgus can accommodate to his intended institutions, the habits, ~~the~~ ~~manners~~, manners, and sentiments of a whole nation.

I have it in view to make a few observations in the first place on the various forms of government that have existed in the world, as far as their ideas can be generalized on their springs of action, and on the circumstances that

modify

modify them, or effect their operation, and render them more or less proper for any people. I shall in the next place point out and illustrate some of the principal objects of public and national policy, which a legislator ought carefully to study and thoroughly understand, in order to be able in the best manner to promote the general happiness.

Of different forms of government and their springs of action. The different simple forms of government that have existed in the world and out of which all others have been compounded are as has been mentioned in a former lecture, Despotism, civilized monarchy, Aristocracy, and democracy. The principle features which distinguish each of these forms were described then. I shall at present add only a few observations on the different springs by which these forms are severally actuated. A great writer whose opinions have received the authority almost of axioms in political science has reduced these to four; fear, honour, moderation and virtue. In despotism, fear of a despot or an apprehension of his power or his passions, is the principle of obedience in every order of state from his ministers down to the very lowest of his people who are equally his slaves. In monarchy a certain love of distinction and consequently attachment to the prince and zeal to serve him who is the fountain of honour is the actuating spirit. Honor though its sentiments are not strictly and universally conformable to the dictates of the moral faculty, yet in many instances resemble them and are useful auxilcaries and supports to them. Honour is an elevating principle and devoted to the service of the Prince, it forms to itself laws which the prince himself cannot violate. No authority or compulsion can oblige a man of honour to commit an action or yield to an imposition which by

by these laws is held to be unworthy or dishonorable. In this view it is a principle of political action, infinitely superiour to the slavish fear of despotic states. For though many of its rules are capricious and some of them are consistent with particular vices, yet the greater part aim at a certain pitch of morals and are favourable to a certain degree of civil ~~liberty~~ liberty. The principle of action in those states where the supreme power rests in the body of the people is virtue, i.e. the preference of public to individual interest, and connected with this the love of democracy itself, as the form of government best calculated to promote this end. It is justly denominated virtue: Because public spirit is not only one of the chief virtues, but is intimately associated with all the other virtues frugality, temperance justice, and piety, or respect for religion. When these decline, public spirit soon declines with them: In aristocracies a degree of virtue may exist, but it is rather the love of aristocracy than of the people. A high spirit of virtue such as has been before described, cannot long subsist in these states, when the ranks and fortunes of men are necessarily so unequal: The nobles will be haughty and the populace envious.

Equal civil rights are not known in such a government; it would be inconsistent with the prerogatives of nobility to establish them. Even the prosperity of the mass of the people is apt to be considered as dangerous to the safety and dignity of their lords. Such a people will seldom be heartily attached to the government where they are almost annihilated and where they have continually before their eyes petty princes but little elevated above themselves, who are notwithstanding their absolute masters. The highest virtue

tue therefore which can be expected in this constitution, and which will be sufficient to render it tolerable, is mutual relaxation on each side. The people will be more easily brought to this temper, when they find a spirit of moderation, prevailing among the nobles. Moderation therefore of the nobility among themselves, and towards their subjects is the proper spring of the government. When a legislator has conceived the idea of his constitution, and of the spring by which it is to be set in motion, he ought to have a reference to both, in the code of laws which he formed for his state.

Of the Laws relative to the Constitution

The first class of laws is of those that define and establish the form of government, and compose what is called the constitution of the state. The boundaries of the constitution ought to be very precisely fixed and its powers accurately defined and distributed. That there may be no doubt in the rules or with respect to their authority, nor in the people with respect to their privileges and that the authority of one magistrate or branch of the magistracy, may not clash, or interfere with that of another.

Of the laws relative to Monarchy.

The fundamental law of monarchy or the laws that relate immediately to its constitution, are those that vest the supreme authority in the Prince and establish his prerogative. Thus far as they agree with the principle of despotic state. But in order to mingle a proportion of liberty in the Monarchy which cannot exist under a despotism, it is necessary that there should be an intermediate body in the state, between the prince and the people, prospered

of privileges and honours, independent on the will of the sovereign. Their dignity and the weight of their influence will impose no inconsiderable a check upon absolute power. The laws therefore that ascertain and fix the privileges of the nobility are also fundamental to this constitution.

A distinction of great importance between the monarchy and despotism is that the former enjoys known, written, and fixed, laws, under the other, the capricious will of the prince alone is the law.

A despotic state therefore can hardly be said to enjoy a constitution. The power and privileges are all thrown into one mass and absorbed by the throne.

In order that the law may be rendered fixed in a monarchy, and freed from the variableness and uncertainty of the princes humour, and will it is necessary that there be some body of men distinguished for integrity and knowledge who may be the interpreters and in some measure the fountain of the laws, whose proper office it should be to give form to the civil code; to expunge from it those laws that are no longer proper; to revive those that are obsolete but useful. To propose to the prince new ones for his adoption, and to prevent the introduction of such as are contradictory to the established code or inconsistent, with the ancient privileges of any order of the community. Another fundamental institution of this state should be the establishment of such a depository of laws. It is of great consequence to the freedom and security of the citizens to fix this body with skill. The nobility are too indolent, and too ignorant of law, for a trust of their nature, or the ~~influence~~ A body appointed by the monarch, and wholly dependent on the influence of the crown would be still more improper. It would be

be in effect making the will of the prince the law. The best depository says the author of the spirit of laws, is a body of men taken from the midst of the people but advanced by ~~a middle~~ their office to a middle rank betweene the nobility and the inferior of the state.

A portion of liberty may be introduced into this government by the manner of creating and forming the courts of justice. The fundamental institutions of the state ought to render the tribunals as independent as the nature of the government will permit. Fixed laws and independent judges will create an idea of security, and so far of liberty in the subjects of any government. Above all the administration of the laws ought not to be restrained by the prince nor committed to his courtiers who are but the minions of his power and will. This would render him formidable to his subjects. whereas the interest and happiness of a monarch is to acquire the confidence and love of his people. It might be asked why we speak of fixed laws and fundamental institutions in a monarchy when the power of the prince is paramount to all. It knows no effectual limits but those it is pleased to prescribe to itself: true but those being once established, acquire by time a great respectability and strength in the ideas both of the people and the prince. He cannot easily or falsely violate them afterwards if he be so inclined. Manners, customs, ancient usuages, become so incorporated into the state of people, especially if they have been permitted to think and enjoy any degree of liberty that it is hazardous to infringe on them. And where they are supported by the opulence and influence of a powerful nobility they gain such stability as justly to entitle them to the name of laws. They are

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not mere names to cover the horrors of despotic power, but are productive of real and substantial advantages to the subject.

Of Laws relative to Aristocracy.

The fundamental laws of an Aristocracy should in the first place ascertain the body of the nobility, and thereby define those who are, or have the right to be rulers; and those who must necessarily be subject. It is a pernicious aristocratical institution which permits all the nobles in right of their birth, to be legislators or magistrates: the oppression of the people then becomes extreme. But when only a small part of their body can be raised at any one time to the senate, this affords a much fairer prospect of good government.* For thus becoming in their turn subjects as well as authors of the laws, and their own condition, being thereby in a great measure assimilated to that of the mass of the state, there is a greater sympathy with the people created, and consequently a greater probability of equity and humanity in the administration of the government. The necessity of controuling the ambition of the noble families and of ever by detecting and punishing all conspiracies against the state which are more frequent and formidable in aristocracies than in most other species of government, requires a body of magistracy for this purpose to be established by the fundamental laws, and to be incorporated into the organization of the state. In the exercise of this authority it is requisite that they should be invested with powers that in their operation sometimes prove to be tyrannical.

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*The greater the disproportion between the senate and the body of the nobles, in point of numbers the greater commonly is the freedom enjoyed by the people. The institutions is the best possible when the people as well as the nobles partake in the election of the senators and magistrates.

Censors, Ephori*, state Inquisitors, have necessarily been clothed with formidable authority; without it the institution would be useless. There may be particular crises of public danger in democratical states, in which it may be requisite for the general safety to invest for a short time an individual citizen with unlimited powers like those conferred on the dictators of Rome. Their duration however being short, Government soon returns to its free and accustomed channels, but in Aristocracies the pride of the families renders the passions, the enterprises and the factious interest of individuals hereditary, and perpetual.

To such an evil attended with such great and constant danger to the state she is obliged to have recourse to perpetual magistracy. The wealth and the influence of the nobility tends to make them haughty, obstinate and untractable. It is dangerous to become their accusers and the ordinary tribunals are too weak to punish them. This magistry therefore should be able to avail itself of surest means of information, should not be fettered in its judgements by forms and delays and should have it in its power by the promptness and severity of its punishments to apply a cure this inherent vice of the constitution. It would be an aristocratical institution, says Montesquieu to make a certain degree of wealth, confer nobility and at the same time preclude the nobles from commerce by which wealth is acquired. Thus opening to the people a prospect of rising by their industry above their original rank. In order to avoid the evils that so often spring from the arrogance of extreme wealth the law should aim as much as possible to prevent the accumulation of exorbitant riches in one family, and to divide great estates, by making prudent regulations, concerning dowries, inheritances and testamentary settlements.

* Sparta ** Venice

Of Laws relative to Democracy.

In democracy the people frame the laws which they are to obey themselves. In a government of this kind, therefore where the people in person deliberate and decide upon the laws, as was the case in most of the ancient republics, a fundamental institution should secure to them the right of deliberating, and voting and define the manner in which this right may be exercised. It is necessary in the constitution to point out the authority by which the public assemblies shall be called. The times and places of convening. The order to be observed in them. And the manner in which all questions shall be proposed and issued. As this is the way by which people exercise their sovereignty, the rights cannot be too clearly expressed nor the mode of exercising it too clearly defined. In large assemblies of the people, the mass of whom are ignorant, and particularly liable to be inflamed by the arts of factious orators, and to be hurried by momentary impulses, into measures unjust, and cruel, and even contrary to their own interest, the ancient legislators endeavoured, to prevent or correct these evils as far as possible by dividing the people into classes for the sake of regulating the manner of giving the votes, and when offices were to be conferred, of limiting the candidates.

The famous division of the Romans into six classes by Servius Tullius, is well known; in which none of the citizens were deprived, of their right of suffrages, they were so artfully arranged, that the property and information might generally prevail in public assemblies, poverty and ignorance. The Athenians were divided by Solon into four classes according to their property. One object of this division was to limit the right of being elected while

while it presented to all the rights of election. The lowest citizen may be able with sufficient prudence to chose a magistrate, while he may not be qualified to discharge the functions of a magistrate. Therefore Solon made the magistrates eligible out of the three former clases only, but judges which were equivalent to our jurie might be chosen also out of the last which was at once the poorest and most numerous class.

In a simple democracy where the people decide all things in person, a senate to digest and prepare the business for the public assemblies, is an institution of singular utility. It prevents the precipitancy and rashness to which such assemblies are prone, when the introduction and decision of affairs are left to accident, to the caprice of individuals, and the impulse of the moment. It imposes some check upon the dangerous arts of demagogues whose succes depends upon deceiving and inflaming the populace.

The institutions that have been just mentioned, I mean a Senate of previous deliberation, and the classification according to their property are not necessary in those republics in which the people deliberate, and decide not in mass, but by their representatives. A representative body will usually possess more temper, moderation and wisdom, than any unqualified popular mass. Still however a senate not as a preparatory organ, but as an integral part of the legislature is useful perhaps necessary, to a wise and well ordered government. A single body of men, especially if it be numerous, is liable to popular passions, to sudden impulses, and to factious influence from a particular leader. A second branch of the legislature is calculated to correct these evils not only by the age

or property it may require in its members, and by the manner of its appointment; which may be made more favourable to the election of wisdom, and experience of a country than popular election, in the ordinary way can possibly be, but simply by the circumstance of its being a separate body.

The same violent impulses or the same factious influence, will not probably operate upon both assemblies at the same time. The moderation and prudence of the one, will restrain the impetuosity and rashness of the other. The same men can hardly be supposed to acquire, the leading and direction of both, and different leaders admitting that they are equally governed by ambitious or interested views, will seldom find their interests coincide. Mutual opposition will impose a powerful check on all improper designs and can hardly leave them any other point of union but the public good. Whether a democracy ought to be simple or representative, will depend in a great measure on its extent of territory. If it is confined to a single city and its environs, it ought to be simple, for if you attempt to make it representative, the facility with which the people can be collected together by designing men to dictate their imperious opinions on subjects already subjected to the discussion of the legislature will soon give them irregular but powerful meetings, a decided influence over every important legislative deliberation. The people therefore acting in person will soon absorb into their own assemblies all the power which they had pretended to give to the assembly of their representatives. Hence the little republics of Greece knew nothing of the principles of representation except in

in their confederate capacity, when the fear of the same formidable neighbour obliged particular states to enter into a mutual league for their common defence. For the same reason we have so often seen during the three last years the national assembly of France controuled in its deliberation by the mob of Paris.

As the sovereignty of the people in a democracy is exercised by vote; the fundamental laws in such a state should regulate the the times, places, and manner of voting. On this subject the principle question among the politicians has been. Whether the votes of the people should be given openly or by ballot. Perhaps all offices which are in the gift of the people, whether legislative, or executive should be conferred by open vote. With them a degree of intrigue is useful. Without it their publick affections are apt to become torpid and inactive. In the legislative body all laws should be enacted by the open vote that the people may know how they are served. But all offices in ~~that~~ their gift should be conferred by ballot; because a selected assembly like this, being more capable than the populace of judging of the merits of different candidates for places of publick trust intrigue here would be improper. They ought to be most free in exercising their judgement.

End of Lecture 25th

LECTURE 26th

Of the Relations of a Government to the Spirit and Manners of a People.

A great variety of circumstances continuing to operate on a nation for a long time contribute to form what is called its spirit, and to give a national and distinctive character to its manners. Into this circumstance enter the wealth and occupation of the people, preceding revolutions of government and the face of the country, climate, proximity to other nations, prevalent ideas of morals and religion, in a word whatever can effect the external or internal state of a people.

Whenever a ~~people~~ nation has acquired fixed manners and a distinctive character, the government and laws ought to respect them, and be in some measure accomodated to them. Laws otherwise the best, if they violate this maxim may be esteemed, and may really be tyrannical. That tyranny is no less real that affects our opinions, and manners than that which affects our lives and property. The consequences of contradicting the spirit of a people are often so dangerous, that it is better to submit to some imperfections in the government, than to aim at great theoretic perfection. It is better to yield to a partial injustice, than to hazard a greater evil by attempting to reform too much. This forms the explanation of those declarations in the sacred scriptures in which it is said that GOD permitted certain evils in the civil and political state of the Jews on account of the hardness of their hearts. This unfolds and vindicates the meaning of Moses when speaking of in the name of GOD, "I have given them statutes that were not good" And in this principle also we find the justification of the sanguinary penal code of

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the ~~jewish~~ nation of Israel and indeed of all nations who have not made much progress in civilization. A rude people ever prompt to violence, require the restraints of severe penalties. A scale of punishments proportioned to crimes is beyond the philosophy of such a people except so far as the simple scale of retaliation extends. They have neither the skill nor the patience necessary to apply to any considerable extent a corrective discipline.

Laws adapted to an agricultural people would not be fitted for a state founded wholly upon commerce. Some countries require a monarchial even a despotic form of government. In them nothing can subsist but some free republican form. Laws fitted for Spanish gravity and pride would not suit French vivacity and levity. The laws of Athens would have ruined Sparta and attempts to introduce the code of Lycurgus, at Athens would have produced civil convulsion.* England attempted to establish a republic in the last century, but her manners were not fitted for such a change. She yielded to the power of Cromwell at first and at last was obliged to take refuge in the monarchy she had abandoned. It remains yet to whether or not the manners of the French Nation are able to support the democracy at which they are aiming or whether they will not after infinite miseries be again obliged to have recourse to the royal family and the nobility which they have endeavoured to exterminate. As laws ought to be relative to a certain point to the spirit and manners of a nation, laws may also have the effect to change those manners and that spirit in a course of time. But as man-

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*The wisdom of a legislator will appear in consulting the circumstances of a people and the spirit that results from them, and adapting to these his political and civil institutions.

manners and habitual ideas are very precious to a nation and become intimately blended with all the pleasures and all the sentiments of right and wrong; laws should never aim directly at changing them.

They should obtain their object rather by an indirect and remote influence. If a legislator in a country where domestic slavery prevailed should wish to make all inhabitants free it might overturn the state to enact a law directly for that purpose. He might arrive at his end more certainly in a course of time, by encouraging the humanity of individuals who might be willing to give liberty to their slaves, or by favouring the establishment of a peculium, by the improvement of which the slave might at length purchase his freedom. Manners and customs are better changed by example than by law, and that example should be gradual and insinuating and not too openly, and violently attack the prejudices of a people. The French have several times conquered different parts of Italy; and have as often been driven out, because the freedom of their manners, shocked the ideas of the Italians. The Czar Peter 1st of Russia attempted once by direct ordinance to shave the beards and change the dress of the Russians. He almost excited a revolt. But as soon as he invited the ladies to court, had them dressed in the stile of Europe and encouraged courtiers by his favour to imitate the European habits and manners he accomplished his purpose without violence.

But if a legislator wishes to accomodate the ideas of a people to the institutions, he intended to establish among them, or to give to those institutions the greatest stability and duration, of which human laws are susceptible, he will find no mean more effectual than a proper direction of the public

education.

education. Youth can be trained to many ideas, and to any manner. The passions as well as the habits of parents can be easily transferred to them. The ancient legislators knew the full force of education. Upon it they almost all agreed to found the stability of their laws.

Their system of education calculated only for very small republics, could hardly be put in practice in an extensive state; But in every state it is a duty of the first importance in the legislative to preside over the public education, and to direct it to promote the end of civil government. It is their duty to provide a constant succession of enlightened statesmen. The means of instruction should be accessible to every citizen. No citizen should be allowed to vote in the assemblies, who had not acquired such a knowledge of letters and arithmetic as to be able in his own person to transact the ordinary business of exchange incident to his station in society. A well informed people, when information pervades the lowest grades in society cannot easily be enslaved. No knowledge can be of so much importance to a citizen as a knowledge of the civil constitution, under which he lives and the great outlines of the law by which he is to be governed.

Understanding attaches a man to them, and makes him vigilant to preserve them. The knowledge of the laws, increases the love of justice. The elements of the jurisprudence of his country should form a necessary branch of the education of a citizen from the highest to the lowest order of school in a state. The policy of Moses on this subject was admirable. He incorporated his political and civil laws, with the laws of religion. The people were commanded

manded continually to read them in private, and they were publicly read in the audience of the people every Sabbath, and more solemnly at the great festivals of the nation; So that every Israelite had the laws of his country in a great measure by heart.*

Of the Corruption of the Principles of the Government.

As laws ought to be relative to the principles by which the government is made to move. Education, custom, manners, every thing should tend to stringthen that principle. But there is a certain excess, to which the principle of each government tends, which is its corruption, that ought to be guarded against with as much care by the laws, as they should to preserve the principle in its due vigour. For example the principle of Monarchy is corrupted when the prince forgetting that it is his interest to maintain only a general inspection into the government by his authority, keeping the magistrates mindful of their duty, and the laws, attempts to govern every thing, immediately by himself and creatures, destroying the privileges and customs, that time has rendered sacred among the people, and by which they still retain a portion of liberty. When he thinks he shows his power more by changing than conforming to the laws; When he calls all the civil officers of the state round his person to make them feel their dependence and receive their flatteries; When stripping his people of popular respect, he makes them merely the tools of arbitrary power; When the honours of the state are prostituted to the ~~laws~~ love, and the infamous pander of the prince pleasures; and when he mistaking his true interest, or conscious of the badness of his government; and therefore

* Hence his institutions have endured longer than those of any other legislator.

therefore fearing for the security of his person, would govern rather by exciting the fear, than by gaining the affection of his people; and studies more to intimidate them by the cruelty of his executions, than to gain their confidence by useful services, and the wisdom of his administration, such a monarchy is hastening to despotism, and the infatuated monarch is creating that insecurity for himself which it seems to be his only study to avoid. Supreme power united with the bad education of princes naturally tends to this issue in the progress of time. The principle of a democratic republic is corrupted, when the spirit of equality which in it is always connected with liberty is carried to an extreme, men by nature have equal rights. In a well regulated state they have equal rights as citizens. But from that equality of right, by which every man has secured to him the fruits of his own industry, and ingenuity, and the inheritance of his fathers, necessarily arises in the course of time inequality of property, and from the necessary order of government results an inequality between the magistrate and the body of ordinary citizens. It is essential to the peace and prosperity of the state that property should be respected, that citizens should be obedient to the laws and reverence the magistrate as their interpreter and organ. But when that reverence is withdrawn from the magistrate, when the people grow impatient of law and order, and wantonly subvert them, to gratify their caprice, or pursue the objects of faction, and when the mass of the people flattered by their demagogues grow envious of the wealth of the rich and infringe on the sacred rights of property, the republic is on the eve of dissolution. To this extreme the democratic

ocratic form of government tends as naturally as monarchy towards despotism. For every thing depending on the people, those who wish to court their favour, are ever ready to flatter their power; to inflame their passions, in order that they may direct to create suspicions or hatred against those who have the actual administration of government; in order that they themselves, may rise into office. Thus the people become proud and insolent, and impatient of the exercise of those powers, by the magistrates, which they are obliged, to intrust to them for their own safety. They become so jealous of their liberties (for it is on this subject that their demagogues perpetually harangue them) that they will not bear the restraint of government, and the lowest and poorest class which is the most numerous, aspire to be on a level with the richest and to divide their property among themselves.

Becoming idle as well as insolent, elections at length are made venal. The populace must be gratified with theatres, shows, divisions, whatever pleasures happen to be in vogue; all at the expence of those who solicit their suffrages, or of the public, if of the former the public must at least ruin some in. But while the populace are amused their servents who are also, their masters, may securely pillage the coffers of the state, in order to fill their own. The deluded people will not suffer them to be called to an account. Corruption and anarchy continue to increase, till different popular favourites starting and endeavouring to enslave the state by means of the people themselves they are at length all absorbed by one and he becomes a tyrant.

Thus perished the liberty of Rome, and in this way many of the Grecian states

states long vibrated between anarchy and tyrany. A democracy has two evils to avoid. One is, great inequality of wealth among the citizens which leads, to aristocracy and then to Monarchy.

The other is the spirit of extreme equality, which always produces anarchy and finally ends in despotism. This spirit when a republic is prone to war like ancient Rome, is greatly cherished ~~xxxxxx~~ by foreign conquests, and by splendid succes acquired by the people. Arrogant and intractable they will hardly submit to the controul of the laws. Zeal^lous of the magistrate they grow jealous of the magistracy. They devote themselves to the leader who augments their glory flatter their vanity and idleness and gratifies them by the influx and dissipation of foreign wealth among them. While the principle of the constitution is preserved in its purity, the worst laws, will be harmless, or may be made useful. When that is corrupted the best laws become useless and pernicious. The gymnastic exercises of the Greeks, which were performed naked, tended to create vigorous citizens and hardy soldiers, as long as the people remained virtuous, but when they had lost their virtue, Plutarch, says, these exercise infected the youth, with cowardice and inclined them to infamous passions. Among a virtuous people an oath has more force than interest. Among a corrupt people oaths are continually sacrificed; and the frequency of swearing times only more effectually to destroy all moral principle.

Of Frugality and the means to Promote it.

The spirit of virtue in a republic is greatly aided by frugal and simple manners. A simple people have no great object to interest them except

except their country, and on this they will bestow the full force of their minds. But when luxury invades them which augments by indulging all the appetites and passions, the public good is lost in private interest and pleasure. General luxury and real patriotism are forever incompatible. The state ought then if possible to have some means of revolving easily into aristocracy or monarchy. The laws in a republic in order to preserve virtue should study to establish frugal manners. To arrive at this end one of the most effectual means is to prevent great inequality of fortune, and to distribute property as equally as possible among the citizens.

Such a distribution was attempted in many of the ancient republics, by agrarian laws, which divided the lands equally among all the families of the state, and made them unalienable from the original proprietors, and their legal Heirs. Such laws are too violent to be useful and they are not even practicable except in states of very small extent and which are founded wholly upon agriculture. A commercial country could not endure such a law. It would be besides unnecessary there. The spirit of commerce is wholly frugal. A better method to obtain as much equality of fortune as is useful or practicable is to encourage marriage, and in such a way to regulate dowries, inheritances and testamentary settlements that the largest fortune which a man may acquire by industry and success ~~should~~ shall usually be divided among his heirs, so as to place none of them above the necessity of like industry. The best model of an agra-

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laws which antiquity affords us, was that establisht by Moses, in the land of Israel. Some very small republics having created Senates censors to be perpetual models of manner. It is evident that such an institution could be of no use in a large state, where they could be observed only by a few of the people. The Censorship was establisht among the Romans, to preserve the purity of their manners. While their manners continued pure it assisted in their preservation; but as soon as luxury began to invade them, the office could be no longer executed. It is plain however that it is an institution which can be of no use beyond the bounds of a single city and its environs.

Of Sumptuary Laws.

It may be made a question how far public frugality ought to be enforced by sumptuary laws, or laws limiting expence in the dress and tables of the citizens. In proportion as the legislator can succeed by his institutions in equalizing the property of the citizen such laws are unnecessary.

Luxury cannot exist; where property is equally distributed *. In some small states, founded on agrarian systems, where every departure from the rudeness of their primitive condition is contrary to the spirit; and dangerous to the institution of the legislator, as was the case in Sparta, they may be useful. In commercial, they are generally unnecessary, at least if not injurious. The spirit of commerce itself, as has been said, is frugality.

* After great inequality of property arises, they cannot long be useful because they cannot long be executed

frugal, i.e. it corrects the extravagance of expence; but a considerable degree of expence, in the wealthy merchants, serves to encourage arts and multiply ~~event~~ eventually the subjects of commerce.

Frugality ought to be cultivated by the laws, in aristocracies, as well as in democracies. Without it the moderation of the passions which is the principle of the government; and essential to its prosperity cannot be preserved. Yet as the government itself is founded on great inequality of fortune some legitimate means of expence, should be discovered, and authorized, which will at the same time be consistent with private frugality. Otherwise we shall ever see in such a state, very poor men without the possibility of bettering their fortune, and very rich men without the power of enjoying them. The state will be miserable and sticked in its prosperity, for want of a proper circulation, cultivation, of its wealth. To remedy this defect, there was an excellent custom among the Greeks, by which the wealthy were encouraged to employ their riches in executing charitable offices for the good of their country. In festivals, and choruses for the entertainment of the people. To these might be added establishing libraries for the public improvement; in erecting statues and monuments in commemoration of great, and useful events, or great Patriots, for ming gardens, and public walks, for the accomodation of the people, and still more the erecting works, and executing improvements for the benefit of their city, or their country, to all which they might be

be encouraged by public honours, and by some means, of perpetuating, the remembrance, and glory of their works. In a monarchy luxury is no crime against the public. It is not only consistent with the principles of the government, but in some degree necessary for the public good. Without it the poorer classes would starve, while the princely estates of the rich, and noble, would stagnate or only unlessly accumulate.

It is in this government that the maxim of Mandeville can be true, that private vices, meaning the luxuries of individuals are public benefits. China is supposed to be the only exception from this rule, whose imminent population would render luxury fatal. Whenever it has invaded the court, it has speedily produced a revolution, and a new family has ascended the throne.

Whatever tends to regulate manners of women, has a useful effect on the public morals. Their corruption speedily produces the corruption of the other sex. Valerius Maximus says, that luxury began to be dangerous, in Rome, when the laws framed to preserve the frugality of women were repealed.

End of Lecture, 26.th

LECTURE 27th.

Laws and the form of government, in any country have a relation to many other circumstances beside those already mentioned; such for example as the face of the country whether mountainous or plane; the soil whether barren, or fertile; the manner by which the people procure them subsistence, whether by agriculture, by commerce or by both; the climate whether cold or warm; the extent of territory whether large or small; the state of women, and the state of slavery &c.

Some of these circumstances might be thought naturally to favour free, others monarchical, or arbitrary government. We might discover in them natural reasons for the difference in their species of government and in the state of society, that has always existed between Europe and Asia. But to examine and illustrate them to any considerable extent, would consume so much of your time, that I have resolved for the present, to omit them, and only to recommend to your careful and repeated perusal, the Baron de Montesquieu's treatise of the spirit of laws, where you will find these subjects along with many others, examined, with the profound reflection and masterly conciseness for which he is so much distinguished.

Of the Objects of National policy.

I proceed now to the second branch of the science of politics which is to point out and illustrate some of the principal objects of policy such

such as the establishment of a political constitution, taxation, the regulation of commerce, the means of promoting population, agriculture, and the arts.* On the last of these subjects some remarks have been already made in the third and fifth lectures. I shall therefore treat only on the three former.

Of a Political Constitution.

Most governments have been founded on Tyranny or at length have ended in it. It will conduce greatly to human happiness, when men have it in their power to choose their own form of government; to be able to establish the principles of political liberty, and to secure their duration. I distinguish political from civil liberty; civil liberty consists chiefly in the security of property and personal safety; which the people enjoy, or in the opinion which they have of their security. Political liberty consists in such an organization, of the constitution that, none of the individuals, or bodies, of men, to whom its powers are entrusted, can easily abuse them to the injury of the people. Sometimes manners, customs, or fortunate concurrence of circumstances will give a nation more personal freedom, and security, i.e. more civil liberty than the political constitution would give us reason to expect, and sometimes the contrary is produced by such a distribution and arrangement of the necessary powers of the government as will make them become

takes place. The liberty of the constitution

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* This composes a second branch of that division of our political ^ inquiries which was proposed in the 20th lecture. Rules and principles that relate to the form of government, and that ought to direct its operation.

come a check to one another, and thereby that abuse to which power when not under restraint is prone. The great powers of government have been divided into three kinds, the legislative, the executive and the judiciary. The wisdom of the legislator appeares in the organization of these several powers, in such a manner that they shall always balance and check one another, and never be collected together, into one mass, in the hands of any men or body of men, for the oppression of the people. If men were perfectly virtuous, all the powers of the government, might be trusted, not only with safety but with advantage to the same hands. But as mankind are generally, ambitious and interested; it is necessary, to make their rival interests, and ambition, restrain each other. These powers, must therefore be deposited in different hands, and so balanced and adjusted, that the interest of each body, shall have more relation to the public good, than to that of the bodies, with whom they are associated in the government.

Although the perfect idea of political liberty requires that the legislative, executive, and judiciary, powers, should be preserved separate, yet they ought not to be entirely, disunited and unconnected, otherwise in their mutual opposition the government, would stagnate, or one more powerful than the rest would absorb them into itself and so create a Tyranny. Such connection they ought to have as to make them in many instances mutually necessary. And such a controul over one another should they possess, that each should be able to preserve itself against the encroachments of one or both of the others.* In England the king possesses a negative on the proceedings

* vide succeeding page.

proceedings of parliament; the representatives of the people enjoy a check on the monarchi prerogative of levying and commanding the army by the privelege of granting all supply bills.

There two Branches of government are perfectly independ on one another, the king being hereditary and his person sacred; and one branch of the parliament; being also hereditary and the other immediately appointed by the people. The judges though they receive their commission from the king yet they are so far independent that they cannot be removed but by the joint application of both houses of parliament. The king possesses a share in the legislature, by his negative and by his power of making treaties with foreign nations. The house of Lords possesses a share in the judiciary being the only court for the trial of impeachments and having supreme appellative jurisdiction in all their causes. The judges so far partake of the executive and legislative influence, as that they form one of the kings constitutional councils, and are often called to assist, in the deliberations, of the legislature though they do not enjoy the efficient power of voting. The government of England ~~is~~ furnishes one of the most perfect examples of the separation, the independence, and yet the necessary connections, and relations of these powers with regard to one another. The supreme executive being hereditary, and surrounded with the majesty of the throne, it derives from hence that dignity

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* note for preceding page: See these ideas beautifully illustrated in Montesquieu Book 2. chapter. 6 where he treats of the British constitution. You will find them also happily applied to the American constitution, in the Federalist N° 48, 49, 50, 51.

nity and importance that it requires, to ballance the immense weight of a legislature. The division of the legislature into two bodies lessens the force of its actions upon the executive which would otherwise be irresistable. And the lords holding an intermediate rank in society between the prince and the commons enables them to maintain the balance, even by adding, sometimes to one scale and sometimes to the other, which without this contrivance would often vibrate very unequally. In the contest for power, the representatives of the people have once prevailed, and overturned all the orders of state. And their influence would always be too great in the government, if the decayed boroughs did not give the crown an opportunity of purchasing a part of the popular representation This however is unfortunately preparing the way to a different and perhaps a greater evil, the corruption of the legislative body, unless they be speedily cured will in time give, an incontroulable power to the crown, This is the meaning of Montesquieu when he says, "That beautiful fabric will perish as all governments have done. It will perish whenever the legislative becomes more corrupt than the executive." The American states have endeavoured to imitate, as far as the diversity of their circumstances would permit them. They were obliged to create the bodies which exercise the three great powers of government out of the same uniformity and have studied to give them as much independence on one another as possible by the different modes of their election. The philosophical examination of the federal constitution and perhaps the constitution of the particular states I shall reserve for another time. In the mean time however I cannot help remarking that the Americans, forced their view too strongly on the terrours of tyranny from which they had just escaped, and estimating too highly the virtues or the wisdom of the people from their efforts during the revolution, at a time when

when the pressure of public danger restrained almost every other pas-
sion but that for the public good, have in almost every instance laid the execu-
tive under too many restraints and in the same proportion enlarged beyond
their due bounds, the powers granted to the legislative. They remembered that
powers in the hands of a single person always aim to extend its sphere. But
they seem in some measure, to have forgotten that its tendency is the same
in the hands of many as of one and that indeed the encroachments of a
numerous body are commonly more rapid and bold, because they derive con
fidence from their numbers and their influence with the people. In all the
state governments, the balance inclines too much to the popular scale.
Their legislative have been making repeated encroachments on both their
executive and judiciary departments.

Of this Mr. Jefferson in his notes on Virginia complains
with regard to the legislature of that state; "They have in many instan-
ces" says he (page 193) "decided rights that should have been left to the judic-
iary controversy, and the direction of the executive during the whole term of the ses-
sion has become habitual and familiar." For a like reason Pennsylvania, and
indeed some of the other states have been obliged to change their con-
stitution, and it is well known that the constitution of New Jersey
has grossly confounded the powers of government, and suffered the legisla-
ture to absorb almost the whole of them. The convention of confederated
America in framing the federal constitution has steered as far as possible
or rather as the prejudices of their country and their own, would permit
them to escape these errors. We find in experience however that the
legislative and especialy the lower house which is composed of the
immediate representatives of the people is still aiming at the same
more
accumulation

accumulation of powers in its own body; and this dangerous project it is able to pursue with great advantage.

It is almost impossible to give the head of the executive a man selected from the mass of the people, that elevation and dignity which will at once dispose and enable him to resist effectually their formidable encroachments, I confirm my opinion on this subject; by that of one of our most enlightened politicians, Mr. Madison, of Virginia; delivered at a time when his judgement cannot be supposed to have received any bias from existing parties "In a government," says he, "where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger; and watched with all the jealousy which a zeal for liberty ought to inspire. But in a representative republic, where the executive magistracy, is carefully limited in the extent and duration of its power, and where the legislative powers is exercised by an assembly which is inspired by a supposed influence over the people with an intrepid confidence in its own strength, which is sufficiently numerous, to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing its objects, by means which reason prescribe. It is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions. The legislative department," he adds, "derives a superiority in our government from their circumstances; Its constitutional powers being at once more extensive and less susceptible of precise limits, it can with greater facility, mask under complicated and indirect measures, the encroachments which it makes coordinate departments &c, Nor is this all. As the legislative department alone has access to the pockets of the people, and has in some constitutions a full discretion, and in all, a

all a prevailing influence, over the pecuniary rewards, of those who fill the other departments, a dependence is thus created, in the latter which gives still greater facility to the encroachments of the former." This error in government I mean the disproportioned strength of the legislative and consequently weakness of the executive and judiciary departments will be more sensibly felt, in the federal constitution, than in those of the individual states. To all the other causes which oppose their energy will be added in this case state power, state pride and imaginary state interests which have very great weight. And all the men who are great at home or have their chief prospect of honour and distinction limited to their own state will except a very few real and sensible patriots among them, be ever ready to take advantage of their circumstances to oppose the necessary powers and weaken the operation of the general government, in order to add importance to their state and themselves.

From these motives we have already seen the states withdraw themselves from the stability to which they weak liable, by the Federal constitution as it was originally framed and we see an unreasonable jealousy of the constitutional powers, of the federal executive cultivated by ambitious or interested men, and frequent attempts made to embarrass or abridge them. This jealousy is the rock of our constitution, on which it will finally split.

Americans ought always to remember that excess of liberty is the beginning of tyranny. It was frequent with the ancient philosophers of Greece to sketch their ideas of a perfect republic and in theory to pursue its organization into all its details. The example has been followed by some modern writers. I shall not attempt to imitate them, your ideas on this subject will be better matured by comparing together different forms of government in the course of your

of your studies and examing in history the practical of each. The great desideratum in this science is the constitution and organization of the three powers which have been mentioned in such a manner, that they shall always move in concert for the public good, and at the same time shall form such necessary checks for one another that the integrity and balance of the whole shall be prudently preserved. The imperfection of human nature however hardly leaves us room to hope that this idea should ever be completely attainable.

What observations I have farther to make upon it shall be introduced, when I come hereafter to take a survey of the political constitution of America.

I shall conclude this lecture with two or three detached remarks.

It has been said that the government is formed on compact explicit or implied. Almost all the actual governments in the world have been formed on force, or on the gradual and casual accretions of power in the hands of Rulers, whom violence, accident or choice originally have placed at the heads of the nation. But whenever the majority of any people resolve it, they have a right to chuse the form of government under which they will live. The state in which men are supposed to exist antecedently to this choice has been called the state of nature. Some writers have supposed that such a state absolutely without government has actually taken place among men previously to society, and they have disputed whether men in such a condition would be more inclined to peace or to war with one another. This state however is merely a fiction. Men have always existed under some kind of government. It is a fiction that has been employed simply for the purpose of considering the rights of man, in general because, no man has a natural right to dominion. And as just government

must

must rest on consent, and be instituted for the public good; it has been employed farther for the purpose of shewing the inducements which men have to enter into society; and what they give up and what they retain of their natural rights in this state, and what adventitious ones they acquire. Independent nations are considered as being in a state of nature with regard to one another. The right of obligations existing in such a state, or resulting from it have been examined with a view to regulate the different political communities, towards one another, who are bound by no law but that of reason, convenience and general opinion. The theory of these rights, and obligations, is called the law of Nature and nations. It compose the last branch of political science according to the arrangements which I have made and will be taken up after I shall have considered the remaining subjects under this branch, Taxation and Commerce.

End of Lecture 27.th

LECTURE 28.th

Of Laws relative to Taxation.

One of the principal operations of government relates to the laying of taxes and collecting of revenue which is that portion of the property of the citizens, which is required for the immediate purposes of the state. Revenue may arise from demesne i.e from lands, or other subjects, not yet distributed in private property, or from taxation. The former of these sources of revenue, may take place in a new country, like that of the United States, where there is a great dis-

proportion

proportion between the population and the extent of territory; but it is generally the remark of a rude uncultivated nation. It is not the interest of a state, and especially of a commercial state, that any subject of property, should remain unappropriated. The principal source of revenue purpose is taxation. And one of the chief objects of Political philosophy is to be able to impose and to raise taxes in such a way as should be most effectual to supply the public necessities, and be the least burthensome to the people. Taxes ought to be regulated according to the exigencies of government, and the convenience of the people. The real exigencies of government are never to be measured by the ambition, the caprice or passions, of those who have the direction of public affairs. The people as well as princes are apt to be seduced by an imaginary glory to expensive schemes, that flatter the national vanity for a while, but in the end draw after them poverty and ruin. When the real wants of a country are ascertained, these must be provided for, whatever exertions they may require. And every country, is able, under prudent direction, to provide for it' real necessities.

In laying taxes, those are to be chosen which are least oppressive to the people. All taxes may be reduced under the heads, Capitation, Assessment, Customs, or Excise. Capitation or tax upon the head, is a tribute levied on citizens simply according to numbers. This perhaps is the most unequal of all taxes. The rich man pays nothing more than the poor and the poor nothing less than the rich. It is a tax, however, which from its simplicity, is peculiarly suited to despotic states. In such states many and intricate details do not agree with the genius of the government; and any complication in the system of finances, would give the officers of the prince too great an opportunity to oppress the people. Taxation under a despotic government therefore will always necessarily be oppressive.

Assessment

Assesment is a certain proportional sale levied on the property, or wealth of individuals. Such a tax may be made equitable, although there be the greater inequality in the division of the property. Land being the most visible and permanent property, is the best subject for this species of taxation. Stock in trade is much more difficult to ascertain. It is of a more fluctuating nature, and attempts to assess would probably be attended with many frauds, in the proprietor, or with oppression, on the part of the government; and an improper disclosure of the secrets of trade. Assesment of land might be made, not merely according to its quantity, but its quality and the value of its produce. These may be ascertained by honest and judicious men of the vicinity, without oppression fraud, or great inequalities. But in laying the rate of tax, allowance should always be made, to the cultivator of the soil, for necessities of life, which ought never to be taxed. Taxes should be laid only on conveniences and superfluities.

Customs are that species of tax most favourable to liberty, and to the contentment and happiness of the people. They are imposts laid on merchandize, imported exported or exchanged in trade. When wisely laid, the merchant always advances them to the state. He reimburses himself by increasing proportionably the price of his comodities; so that eventually the consumer pays the import to the merchant. But confounding it with the price of the goods, he does not perceive the tax; and this is the ground of his contentment. The demand of money is always odious, where there is no compensation for it, real or imaginary, immediately visible. But when men seem to receive an equivolent for what they pay, they pay willingly;

willingly. This is the advantage of customs; as a tax the payment of it is wholly optional, and voluntary on the part of the consumer. And if he does not perceive that he is paying to the state. In order to favour this deception and thereby promote the contentment of the people, two principles ought to be observed; in the first place there ought to be a reasonable proportion between the natural price, of the commodity, or that which it ought to bear in trade, without the duty, and the quantity of the impost. Otherwise the tax is felt: the illusion is at an end. In the next place, imposts should not be laid on such articles as has become necessaries of life among the poor. Such duties operate like a capitation, and are necessary grievous, and are unequal in their pressure on the people. The more they can be laid on mere luxuries and merchandize, of costly ornament, and accomodations, the wiser, the policy. They fall directly on the wealthy, on the prodigal, and are most willingly paid. Care should be taken not to impose an unequal burthen on any branch of commerce.

Large imposts may be made to defeat their own intentions, by diminishing consumption. Moderate customs and a flourishing commerce, will best to fill the public treasury. Imposts may be made so high as to amount to a prohibition of certain articles. Another observation merits attention on the subject. As the merchant who makes the advance to the state, must not only be eventually reimbursed, but receive a profit upon the advance as well as upon all other monies employed in his business, the earlier in trade any customs are made, payable the more the prices of the goods

goods, will be increased, at least to the consumer. Customs when they are raised beyond a certain reasonable proportion, between the duty and the price of the commodity, if they do not lessen, importations always prove temptations to smuggling. Whenever the risk of smuggling is overbalanced by the quantity of imports the treasury will be defrauded. Frauds committed on the revenue, are restrained by fiscal punishments.

When imposts are moderate and the nation is free, that is subjected only to the government of the laws their penalties may be made severe. They may be even more severe, than they can safely be in despotic states. But if imposts are excessive, vigorous fiscal punishments operate to the ruin of trade, as well as the oppression of the citizens. Excise is the last species of tax. It is a duty laid on commodities, in actual use, and not as customs are on goods in trade, and in the course of their exchange from hand to hand. It is generally the most odious kind of taxation to the people. For although duties collected by excise, not be actually so heavy as those raised by customs, they are notwithstanding they are more directly felt as a tax. Besides the methods necessarily employed, to discover excisable goods, are often peculiarly obnoxious to the public opinion. Taxes may be rendered odious by the mode of collecting them as well as by their quantity.

It is the part of good policy to devise those methods of collecting which are least burthensome to the people. Of all methods the most odious, perhaps, is that of framing the revenue. It always subjects the people to oppression from the farmers. And it mortifies and offends ~~e~~ them with

with the view of sudden great fortune, acquired without merit. Such fortunes so acquired when frequently beheld have also, a pernicious effect on public virtue.

They render the people discontented at first, but afterwards inspire a love of gain, by whatsoever means it may be obtained, instead of that love of country which should be the ruling principle of a free nation. Because free countries have frequently paid the heaviest taxes. And sometimes a tax laid on a particular manufacture has quickened industry and been followed by an improvement in quality or, an augmentation in quantity of that manufacture. It has passed into a maxim with some writers that the increase of taxes is a benefit to the state.

It is true free states are usually more able to pay heavy taxes than others; and being commonly smaller in extent than arbitrary governments and surrounded by their ambitious and dangerous neighbours, they are often called to greater exertions, in defence of their liberty or their existence.

But the power of supporting such imperitions does not arise, from any idea, in the rules of their benefit to the state, but from the necessity of their situation. A gradual increase of taxes, when they are not carried to excess may sometimes be serviceable to promote industry and the improvements of the arts. To see how this is affected, let us attend to the following considerations. There is a certain portion of labour, far, enough from the utmost that an industrious citizen can employ, which is requisite and sufficient to supply him, with the necessaries of life; whereas, if he exerts his utmost industry; he will be able to furnish a considerable surplus above necessaries. Between these two points the moderate labour that is sufficient

to supply

to supply necessaries and the highest exertion of industry, which will furnish additional, superfluities, taxes gradually increase; and as men may want stronger motives, than simply, the prospect of gain to stimulate them to put forth all their powers, we may sometimes find these motives, in the necessity of furnishing the taxes demanded by the state. Whenever taxes are augmented the increase should be gradual, and be made by small increments at a time, that the people, may learn by experience to feel their own abilities. Great and sudden augmentations are always calculated to alarm or discourage them. I add that the maximum of taxation, or the highest surplus for the good of the public which the greatest industry can yield, ought seldom to be aimed at by the rulers of a state. Human nature constantly at its full exertion may at length become fatigued, and be ready to bless less free government which taxes were lighter. Besides a state should not always be at its utmost effort; emergencies, will arise that will require greater exertions, than common, and strength should be left to meet these events.

Of Laws Relative to Commerce.

Another of the most important operations of government respects the encouragement and regulation of Commerce. Commerce consists in the exchange of goods, produced by the labour, of one person, or one country for that of another. It is founded on the mutual wants of mankind real or factitious. Commerce tends to civility or the refinement of manners, by creating a free intercourse, among nations. It produces at the same time, a certain spirit of exact justice, that is unfriendly to the benevolent and charitable emotions of the heart. Money is the object of chief desire. It buys and sells, every

thing

thing. A commercial people are seldom hospitable people. These effects however will be varied according, as commerce is the sole and principal occupation of a state or as it is united with agriculture in different degrees.* Commerce by furnishing a vent for the produce of labour and procuring in return for desirable accomodation increases industry, promotes the art, and thereby augments the wealth of a state.

Commerce is either internal consisting of the traffic that takes place between the citizens of the same state, or external, which consists in the traffic between the citizens, of different states.

The more extensive a state is, of the more value is its internal commerce, and the less does its prosperity depend on its traffic with other nations. Free states whose manners are frugal and simple, and especially if they continue of small territories when they trade at all are generally inclined to enter into an Economical commerce. That is to become carriers for the rest of the world: it is their objects to consider the wants and superfluities of different nations, and to avail themselves of both. An economical commerce necessarily requires that its profit be small: it exists only by underselling them. It gains but little, but it must be made to gain constantly. Trade can flourish in none but free states. Freedom is the soul of enterprize, and in free states alone the property of the merchant is sufficiently secure. Besides in monarchy general by the humble and frugal occupation of the merchant, are held in contempt; But in free countries, merchants have been found capable of the greatest enterprises

* It deserves to be remarked in order to take off part of those unjust prejudices that are apt to be entertained against one another that hospitality and indeed all other national virtues and defects arise not from the difference between nations as they are men, but as they are effected by a state of society. The character of men are formed by the circumstances in which they are placed. And those

ser. I shall now suggest a few principles of legislation relative to this subject. The laws and spirit of a nation should annex a dignity and respectability to the character and profession of a merchant in order to favour the succes of trade. These laws are founded on good policy, which encourage trade with wealthy and pacific nations who can take the greatest quantity of our produce and manufacturers on the best terms or even with commercial nations who will furnish their merchandizes, at the cheapest rates, and will take the largest portion of ours in return for theirs

Laws are impolitic that restrict trade to one or only to a few nations. Competition alone can establish the just rates of merchandize, and reduce the profits of trade to the lowest standard. The institution of banks when under proper restriction is useful to trade, by facilitating a reasonable credit to merchants. By credit they encourage industry and spirit in promoting the most useful enterprises of commerce. The multiplication of banks, becomes an evil, and by augmenting the quantity of artificial medium, of trade, augments in proportion to the price of labour, and all commodities, in the market; and in the event injures the trade they were intended to serve.

The incorporation of companies of merchants for exclusively managing and enjoying any particular branch of trade, is always impolitic, unless the trade be of such magnitude and attended with such expence and risk, that it cannot be managed, with advantage by individuals. In that case the privelege of ~~individuals~~ entering into the company, ought to be made wide as possible. The charter of incorporation ought to be limited to a term

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those who have the greatest contempt for one another would exchange ~~words~~ compliments manners with exchange of situation.

term of years, so that the first convenient opportunity may be embraced for throwing open the trade and making it free for all. The English East India company have held a monopoly of that trade, too long for the benefit of the nation. Commerce ought to be entirely free. The interest of merchants, will always create, or find out its most profitable channels of trade, better than the foresight of the legislature.* Its freedom however will not excuse it from certain restrictions dictated by the spirit of commerce, and intended to promote its extent by favouring the arts. In England for example wool is prohibited from being exported; but it is only, in order to form a better staple of trade by being worked into cloth.

The freedom of trade is injured by excessive customs, All unnecessary delays, or intricacies in transacting busines in the custom houses. The more the laws guard the trader from imposition, and the fewer auditors and judges he is obliged to be concerned with, the more favourable it is to the freedom of commerce. These are transactions, that must be repeated every day. Expedition is absolutely necessary for the merchant. The life of commerce depends upon the punctual fulfilment of engagements. Every means must therefore be put in merchants power to compel punctuality in contracts. Let it be

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* Each nation having controul over its own commerce may subject others to an inconvenient restraint in their intercourse with it. Hence the necessity and use of commercial treaties with states whose wrong policy may incline or whose peculiar situation may enable them without the intervention of such contracts to subject us to disadvantageous terms, or to entire prohibition in some branch of trade. It were better for the commercial world that the necessity of such treaties should not long exist.

it be lawful for him to seize even the person for debt. Montesquieu speaks of that as an excellent law in Geneva, which excludes from the chief honours, and privileges of the state the children of those, who die insolvent, unless they have first discharged the debts of their parents, ~~debts of their parents~~. In the intercourse between nations, there will generally be a balance due in the end of the year from one to the other.

The unfavourable balance from one nation must be compensated by a favourable one from some other, otherwise the specie must in time be drained from the country, and trade must stagnate. The commercial states are frequently too anxious about this balance, and fatigue themselves with jealous calculations and fears about its poise. Let laws and manners encourage industry and frugality. The balance of trade can never continue long against a frugal and industrious nation. Luxury and indolence will unavoidably turn the scale; because the imports to qualify these, will be greater, than the exports to pay them. The surplus must be paid in money. The balance is not to be maintained by axious calculations, nor by any regulations of commerce, but by returning to frugal manners. Frugality enables artificers to work cheap, and merchants to trade for small profits. Cheapness of labour, and smallness of mercantile profit will ever attract trade. * The laws may prudently, proscribe some branches of foreign trade which lead to luxuries, and encourage some manufactures in preference to them. But the principal attention of the state ought to be, to support frugal and industrious manners.

Of Money.

Trade in the early and rude ages, of the world, was carried on by barter, or the exchange

* vide page succeding.

exchange of one sort of goods, for another. This was soon found to be extremely inconvenient, especially after, exchanges in the progress of society, were required to be frequently made. Some medium of commerce, therefore became necessary, which should be a universal sign of value, such a sign ought to be rare, that a small part of it, might represent, a large portion of other commodities, and thereby, be easily portable for the convenience of trade. It ought for the same reason to be divisible into minute portions.

It ought to be durable, that it might not decay, by being exposed to the air, nor be liable to be too much worn nor too much wasted, in passing from hand to hand; and finally it ought, to have an intrinsic value, and to be itself an object of desire, and therefore, a proper subject for commerce, as well as a sign of wealth. This quality is necessary, because no authority, can give a value and currency to an object, that is of itself, of no estimation. The precious metals and they alone possess all those properties, and therefore have been employed as the universal sign of value. Gold and silver have a real, as well as a significative value. They have their price as well as other commodities in trade; and like them, their price depends upon their relative quantity. If all the gold and silver in the mercantile world, were

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* Note for preceding page. Two or three facts exist in the United States, the proper cause of which, is often mistaken by foreigners, and which on that account, merit your attention. The price of labour here, is higher, than in Europe; yet the products of the soil, can be purchased so reasonably by the merchant that they may always be carried to a good market abroad. But manufactures are so expensive, that they cannot hitherto, except in a few instances, be established with any advantage. All those effects are the natural consequence of the great quantity of land in America, either unimproved, or under imperfect cultivation.

placed on one side, and all the goods on the opposite side, the whole value of the one, would be equal to the whole value of the other; and any proportional quantity of the one, would be equal to a similar portion of the other. Increase the aggregate quantity of the precious metals, and each piece will then posses, a smaller relative value. If industry and art augment the produce and manufactures of trading nations, the quantity of money, remaining the same, each piece will then require an increased value. The authority of the state cannot alter this steady ratio of things, without extreme violence to every liberty and injury to trade.

The government ought therefore never to attempt to regulate the prices of commodities in commerce, except in rare, cases, of the most urgent necessity. Indeed every attempt at arbitrary regulations, or changing the natural proportions of money, and other merchandizes, will usually prove as abortive, as they are impolitic and pernicious. The assumed power of regulating prices, destroys industry, and increases ruinous scarcity, which is the cause of the evil attempted by it to be cured. If scarcity produces an augmentation of prices that every augmentation is its own remedy. It awakens industry, it invites a supply from every quarter, that can furnish it till the increasing quantity in the market again brings down the prices to their natural standard. All force drives away the supplies from the market, and continues the public distress. The quantity and proportion of the metals is determined by weight: But on account of the inconvenience and inaccuracy, that would attend weighing, and dividing in all the multiplied transactions of commerce, between individuals, the state usually takes that care upon itself; and fixes its signature and attestation to the weight in of the mint.* Coinage is the impressing of some known and public mark on the different pieces of money in circulation and thereby pledging the public faith

* See next page

faith for the exactness of their respective weights. A certain and known proportion of alloy is usually mixed in coinage with the precious metals, to increase their durability, and the size of their prices. The dangerous and dishonest expedient of increasing the quantity of alloy, and of raising the denomination of the coin has been sometimes practised in arbitrary governments, in order to pay the public debts with a less quantity of gold and silver.

All such acts are injurious to the interest of the prince, as they are void of faith to the nation. In the commercial transactions between different nations, money must be remitted from one to another. This necessity has given use to bills of exchange, to save the risk of remittances, in specie. When equal sums are to be remitted from each to the other bills may be bought at par. When a greater sum is due from one, than is to be received from another; the nation against which the balance is found, must remit in kind, or must pay an additional sum for bills; which sum will always be equivalent to the risks of remitting, and proportioned to the quantity to be remitted. The exchange is therefore against that nation and bills must be purchased at a price above par. The balance of trade between two nations may of course be generally determined at any period, by the rate of exchange.

But your time and the nature of these lectures, permit me to state only a few out of innumerable facts, on these subjects, with which experience and inquiry hereafter will make you acquainted.

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* Note for preceding page. A word derived from the Dutch term Munte and this is derived from the Latin word Moneta which signifies both the stamp upon the coin and the place where it is coined; from hence also comes the English word money.

End of Lecture 28th

LECTURE 29th

Of the Law of Nature and Nations.

Nations in their political capacities may be considered with regard to one another, as individuals and moral persons, subject in their natural intercourse only to the rules of reason and humanity; but amenable to no common tribunal except that of their own interest and opinion of the world. The happiness of mankind requires that there should be some known and general laws tacit or explicit, to regulate the conduct of nations towards one another.

On this subject there are two important questions. In the first place are there such laws equally binding on all nations, and how are they ascertained; and in the next place, by what authority are they prescribed and by what sanction enforced? With regard to the former question, Independent nations may justly be considered in the same light with respect to one another, as independent individuals previous to the existence of civil society, enjoying the same rights and subject to the same obligations. This state has been denominated the state of nature. These rights and obligations which are to be ascertained only by the application of reason, and good sense, result from the natural relations of man to man. Hence the rules prescribed on this subject, have been called the law of nature.

But because individuals are ~~rarely~~ rarely if ever found actually to exist in this state and its ideas are applicable almost solely to men in their national capacities, the ~~little~~ title of these rules have received an addition, and the collection of them in one code has been called the law of nature and nations. The most rude and barbarous nations have not been without some rules to ascertain and regulate the intercourse of their respective tribes. Rules arising from

necessity or convenience, and deriving their authority from custom.

But it is only among civilized nations whose manners and political institutions are nearly similar, who have been long connected together by the most liberal intercourse and by imparting to one another their improvements in letters and the arts, that any thing like a regular code, can be expected on this subject; indeed it is only in modern times and among the nations of Europe that this law has taken the form of science. Among the nations of antiquity with whom stranger and enemy were almost synonomous terms it was hardly known till the latter ages of the Roman empire. The civil law at that time was brought to a state of high perfection and some but yet imperfect principles of the law of nations were acknowledged as forming a part of the doctrines of natural reason. In modern Europe a diffusion of letters, refinement of manners, the influence of religion and a spirit of humanity resulting from all these causes, and from their interest and necessary intercourse of the most enlarged and universal commerce that ever existed in the world, have contributed to give an extension and accuracy and a systematic form to the law of nature and of nations which it had never before received. Grotius has the honour of leading the ways on this important subject in his treatise "De jure belli, et pacis". After him his comentators Barbeyrac, Puffendorff, Bulamaqui, Wolfius, Vattle, and Vanbynkershoek, have attained the highest reputation and have become authorities to which even nations have appealed to decide their controversies. They have left little to be desired in the science. To the second question, by what authority is the law of nature

of nature and nations prescribed by what sanction it is enforced on independent communities?

I will answer in a very few words. It is prescribed by common consent among the people in Europe who have agreed to submit nearly to the same system and to these, we may now add the United States of America and the European dependencies in the East and West Indies. In this age of refinement and literature, learning has acquired such an ascendency, and learned men such great weight that the opinions of great political philosophers have become a standard for judging, and in some measure a law to princes and states. Their authority is resorted to, and often admitted as decisive in disputes between the most powerful kingdoms. But besides this indirect authority the greater part of the principles of the law of nature and nations as they have been illustrated and established by the greatest writers and most rational philosophers have within a few years been explicitly recognized in the treaties of different states. Principles thus recognized and adopted become positive laws. Other principles admitted by custom with out being ratified by express consent, compose the implicit or what Vattle calls the necessary laws of nations. The sanction of these laws is national convenience and advantage, or the fear of the just resentments of other nations, for infringing them. Fairness, justice, and good faith are always of advantage to nations as well as individuals. Injustice and cruelty though they may profit for a moment, yet in the end are generally injurious to the public interests.

Division of the law of Nature and Nations.

The law of Nature and Nations does not respect the internal policy or institutions of states

of state, but merely its external rights and obligations in its relations to other states. These relations are three fold, of peace, of war, and of neutrality. And this law is consequently divided into three parts. The first containing rules and principles relative to peace; the second rules & principles relative to a state of war, and the third, rules and principles relative to a state of neutrality.

1st Of Rules and Principles relative to a State of Peace.

These relate principally to the independence and equality of nations and their rights of absolute controul over their own political arrangements; to the extent of their jurisdiction; to the privileges of intercourse and commerce with one another; and to their rights of embassy and representation. The independence of states and their equality with one another; as to their rights and priveleges, lies at the foundation of the law of nations.

This is a proof indeed that this law has taken its origin among nations that in fact are nearly equal in extent and power. For the justest claims are seldom conceded by such powerful bodies when they possess force enough, to violate or refuse them with impunity. A greater or less degree of wealth population or extent of territory makes no difference in the rights that result from the independence and equality of states.

Among these rights the principal is that of establishing their own form of civil policy without the interference of any other power. No right can be more precious to a nation than that of chusing their own government. Any attempt therefore to change or modify the established government, or to prevent the body of a nation, when they please, to alter its ancient form, under the pretence that such change or preventing such alteration is necessary to the convenience or safety of the neighbouring

neighbouring powers is contrary to the rights and the law of nations. It is likewise a violation of their independent rights, to intrigue with the parties that may spring up within a state; and still more to encourage a factious part of the people, to oppose or disturb the order of the government under which they live.

According to these principles the Empress of Russia, the Emperour of Germany, and the King of Prussia have been guilty of the most grossinfraction of the law of nations, in the unwarrantable interference in the affairs of Poland, and especially in their atrocious dismemberment of that republic, and their resolution to dictate a form of government to the remaining provinces.

The ancient Romans were infamous for intermeddling in the internal disturbances in all states (in the reach of their arms) till they broke in succession and overturned the independence of all. On this ground also the conduct of the combined powers of Europe is justly condemned in the war they have waged against France. These principles however do not prohibit one state from yielding succours to another that is oppressed by its government, or is afflicted by a dangerous insurrection.

Yet this case requires the most profound consideration and the most dispassionate prudence, lest under the pretence of assisting a nation a faction only should be cherished or a tyranny protected. In civil dissentions no aid ought to be afforded by a foreign power, to any party unless it is known to embrace an undoubted majority of the people; or unless,

there is the best reason to believe that its succes will hereafter be approved and form the happiness of the nation. Thus we vindicate the aids granted by France, to the people of America, during the late revolution; which estavlished our liberties and our independence.

From the independence and equality of nations, in the next place results the right of using their own resources, and advantages, as they please for their interest, provided that in using them, they do not infringe on the rights of others. They may admit some nations to the participation of greater privileges, than others. They may grant and receive such favours, as they conceive most for their own benefit; and for this purpose they may enter into alliances, and form national conventions and treaties, which will materially alter the relations of states to one another; and create on all sides new rights and new duties. Treaties when made under the proper authorities ought to be observed with invincible faith. The violation of national compacts involves a greater immorality, than the breach of any other contracts because, it draws after it pernicious consequences of much greater enormity, and extent. They cannot be justly annulled or altered but by the consent of both the contracting parties.

Justice requires that the fairest interpretation should be given, in which the end evidently designed to be promoted by the treaty should serve as a guide.

In the United states treaties concluded by the President and Senate are made the supreme law of the land. The national judiciary therefore is charged with their interpretation; and with seeing them faithfully executed within the jurisdiction of the states, and perhaps in all countries it would contribute

contribute to good faith, and might serve to give greater stability to these conventional laws of nations, than they have hitherto enjoyed, or at least save them from so many, and such wanton infractions, if their interpretation were confined to a different body of magistracy, from that which framed them.

It has been made a question in the law of nations whether or not a revolution in the government of any people annuls the obligation of a treaty contracted under the preceding ~~g~~ government? I answer a treaty is justly supposed to be a convention made with the nation and not with the men who have the powers of government in their hands. These are but the organs by which a political body communicates with another. The organ of their intercourse may therefore be changed ~~while~~ their conventions or contracts ~~t~~ retain all their validity.

Of the Extent of the Jurisdiction of States.

The jurisdiction of a state extends as far as the limits of its territory and over all rivers lakes and bays, included within its bounds. The territorial limits of countries have been fixed by time, custom and convention with neighbouring states. In taking possession of new and uncultivated countries and claiming jurisdiction over them, the principle of convenience as formerly * explained must operate, and treaties with other powers, who may wish to occupy portions of the same lands must finally fix the limits.

It is reasonable that if any water be encompassed by the land forming the territory of particular state, the jurisdiction of the state should equally extend over the water, and over the land. If a river or a bag forming the

* Lec. 21, 1st article, of Property resulting from ~~occupancy~~. occupancy

the boundary or part of a boundary, between two states, it ought to be considered as a natural highway and the navigation of it should be free and common to both nations unless by voluntary and unconstrained treaty, it be otherwise agreed upon. If one nation encloses the mouth and another the head of a river by their territories reason still requires that the navigation of the river through its whole course should be free to each nation; each giving to the other security for the proper use of that liberty, and for their mutual safety. It has been a question much contested, how far the jurisdiction of a state, may be extended over the ocean. Some nations on account of their great maritime power, or through pretences of their commerce, or their dominion, have advanced claims to jurisdiction over particular seas. The claims of England have been more arrogant on this subject than those of any other nation. The ideas of mankind however are becoming more just and liberal. The ocean is considered by most writers as the universal highway of nature; and equally free for all nations.

Yet every state is expected to extend its protection not only to friends but even to strangers, within the reach of its power against all hostile aggression, its jurisdiction is admitted to extend into the sea, as far as the force of its arms can reach, that is within the ordinary range of common shot. That there may be no uncertainty of this limit, the United States have fixed at one marine league from the shore

Of the Intercourse and Commence of Nations.

As the law of Nations is founded on the natural obligation and the desire among refined people, to extend as far as possible, the ties of humanity and benevolence among mankind, as well as to promote their mutual interests, the privileges of intercourse, and commerce between all the states of the world should

should be made as liberal and extensive, as ~~inconsistent~~ the safety of with each.
Strangers cannot claim admission into any state, as a perfect right, acknowledged by the law of nations; yet agreeably to the benevolence of that law the privilege, ought not to be refused, where it is not likely to be attended with danger. But a clear and certain rule on this subject is that when a stranger, is admitted into any nation, he is taken under the protection of its laws. His property as well as personal safety is deemed to be under the guardianship of the power and justice of the state. He still retains the right to dispose of it, as he pleases, or if he dies within the jurisdiction of the state, an intestate it ought to be preserved under the public authority, for the use of his legal heirs.* As he enjoys the protection, he ought to be subject to the countrol of the laws.

During his residence in any state, it is his duty to demean himself orderly as a good and ~~orderly~~ citizen. And if in any thing, he offends against this rule he shall be subjected to the law as if he were a native.

If there be strong and well supposed suspicions of his abusing, the privileges of a stranger, to any hostile, or unfriendly purpose, such as corrupting the principles of the citizens, or taking plans, or charts for the use of an enemy; he may without violating the rights of hospitality be required immediatly to depart from the country, or be sent out of it under a proper guard.

As to the privelege of intercourse, for the purpose of commerce, it is generally the interest of states, to under the ingress and egress of fair trade perfectly free. This however like the former, is not a perfect right. And nations frequently entertaining ideas of advantage in encouraging one species of commerce, &c or the

* See last page, of this lecture.

or the commerce of one country, in preference to another, may regulate their commercial intercourse, according to their pleasure. And other nations therefore must submit to those regulations which each think fit to prescribe for itself except they can be altered by convention. Hence those numerous commercial treaties, which form so large a part of the positive or diplomatic law of nations in most of the modern states of Europe.

Of Embassadors or National Representatives.

The fourth class of laws relative to a state of peace respects the rights of embassy or representation. The general convenience of nations, has from the first ages of civilized society, given rise to their residing near one another, by means of their representatives. The embassadour of an independent nation possesses the independent rights of the nation, which he represents. His person is sacred and inviolable. He is not amenable to the civil or criminal jurisdiction of the country in which he resides. Yet if he should so far forget the rights of the nation, to which he is sent as to insult its government, to intrigue with its parties, to contravene its laws, or to attempt to foment sedition or dissention among the people, the government may apply to the state from which he comes, with a request that he may be recalled, and it shall be the duty of such state to recall him. Or if the exigency of the case requires, it, he may be immediately ordered and sent away. Sometimes the public safety may even demand that his person be confined, the government that confines him, or that orders him to depart, relying on the justice of the state, which sends him to approve the act when the cause is understood. Otherwise sending away or refusing an embassadour, is construed to be a proof of hostile intentions, and is of course frequently, made a ground of war. Any nation has a right

right to send its representative to reside within any other nation, nor with the principles of friendship, and good neighbourhood permit the latter to refuse admitting them except for such causes, as have been already mentioned. Yet in times of civil dissension, it may be doubtful in which party the power or authority of the nation, is properly vested. In such a case, a neighbouring state may justly refuse, to receive an embassadour from either party till the contest be decided; or if it consent to receive one, it seems to be more proper that it should be from the party who is, in actual possession of the government. Thus having given you a very brief sketch of the principal rules relative to nations in a state of peace, I shall proceed in the next lecture, to lay down, those that are relative to a state of war and neutrality.

Note for page. * For a long time, these rights were little understood in Europe and hardly known in the rest of the world. Even till very late years, the droit D'Aubaine as it was called, remained a stain on the humanity of France.

E N D, of Lecture, 29.th

LECTURE 30th

Of Laws relative to a state of War.

Nations are often necessarily engaged in a state of war from the pride, jealousy, and ambition of others. And not unfrequently they mistake their own passions and imaginary interests for the just and reasonable causes of war; the organization therefore, of the national force by which they may successfully repel injury or retaliate aggression, is an important object of political philosophy. Nations in conducting even their wars, should remember that they are men.

In the causes of war, therefore they should aim to be just and in the conduct of them they should exercise all the humanity, that is consistent with the nature of the contest, and the end to be obtained. Civilization and refinement of manners, tend to extinguish that ferocity, and cruelty in the conducting of war, which are the disgrace of human nature in barbarous ages.

On this subject I shall propose a very few principles on the causes of a just war. on the time and manner of commencing it; on the means of carrying it on, and on the method of terminating.

On the Causes of War

The just causes of war, may be stated in general to be the violation of any of the rights of nations. Because all the citizens or subjects of a state, are under the protection of its powers, and its laws, any unjust aggression on the person and property of any of these, made under the authority of another state, or made by its subjects, and refused to be redressed after proper application for the purpose by the government of that country, whose citizens have been injured may be deemed a reasonable cause of war. If a nation, is found arming and preparing itself in any advantageous posture of defence

of ~~defence~~ offence and refuses to desist; or to give an amiable explanation of its conduct to another which has probable grounds for apprehending some premeditated aggression on its safety or its rights, this also has been held to be a justifiable cause of war.

On the Time and Manner of Commencing War.

War which is followed by so many and such cruel calamities to mankind, ought never perhaps to be undertaken, till every pacific means has been previously tried in vain to obtain redress of injuries, actually received, or satisfaction with regard to those, which are justly apprehended. One exception there is to this principle. When there is sufficient reason to believe that all application will be fruitless to a predetermined enemy, and delay will be only yielding him greater advantages, to attack with success, in that case the injured party, may strike his blow, whenever he finds it most convenient for himself.

It has been usual to precede hostilities by a declaration of war. And some of the ancient nations accompanied this declaration with very formal ceremonies*. This custom has lately been growing into disuse among the nations of Europe. It is necessary only that each state, take the most early means of apprizing its own citizens of the state of hostility in which they are placed.

The people of the United States will always be apprized of it by the act that engages the nation in war; for it can be undertaken only in consequence of a solemn act of congress. By this wise provision of our constitution, the people are defended in the best possible manner, from unnecessary wars that spring either from the ambition of princes, or the inconsiderate passions of a populace.

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* When the Romans sent a herald to the enemy's borders to demand warp, and if within 30 days they did not obtain the satisfaction they expected, the herald returned and hurld a spear into their territories in token of defiance, or as a declaration of hostilities.

Of the Means of Carrying it on.

As to the means of hostility and offence that may be lawfully used; they are whatever tends effectually to weaken and subdue an enemy, and bring him to reasonable terms of peace. Reparation of injuries and the restoration of peace, and amity upon equitable terms are the proper end of war; and no violence ought to be permitted by a humane, and magnanimous people that do not directly contribute to this end.

Every mean of inspiring terrour or inflicting death in battle is justifiable. But all unnecessary acts of cruelty, such as the use of poisoned weapons, poisoned springs or provision, putting captives to death, reducing them to slavery, compelling them to fight against their country or oppressing them by ingenious confinement; are abhorrent from true magnanimity, as from true humanity; individuals are not to be considered as culpable, in any war; they are therefore entitled, to the exercise of all possible Enity, when they are in our power, and not immediately engaged in the acts of hostility. On the same principles all devastations committed on the property of unarmed husbandmen peacibly pursuing the labours of the field are utterly unwarrantable. This is making war on human nature not on hostile nations.

It is impolitic also by destroying the provision that may in the event be useful to ourselves. There may be an exception to this rule, when a general has it in his power, by destroying the provision of a country, to impede the dangerous course of an enemy, or to gain some great decisive advantage over him. Privateering or attacking by private vessels of war, the peaceable merchants of any nation pursuing their traffic ought to be condemned on the same grounds. Acts of this kind tend to involve individuals in distress, and ruin but contribute little or nothing to

weaken

weaken the enemy or determine the issue of the war. Some attempts have been made lately, by different nations to limit or put an end to the odious and unjust practice of privateering. But they have not been able yet to execute their own humane ideas; and privateering under a few limitations as the precautions and forms necessary, in commissioning vessels and condemning the prizes still remains, as a reproach, on the policy and humanity of modern times. Every act by which a state endeavours to revenge an innocent and helpless individuals the injuries, or the imaginary injuries of the nation, to which they belong is unjust cruel and impolitic. Therefore confiscating or sequestrating the property which foreigners now may hold in the public funds, or in the hands of private debtors of our own, and seizing on the vessels of their merchants in our harbours, at the commencement of war, instead of being a justifiable mean of offence, is a shameful violation of national faith and national honour.

These debts were contracted with the approbation of the laws, these vessels entered their harbours under the protection of laws. And the laws cannot either with good faith, or good policy be made a decoy for the ruin of innocent and honest traders who have honoured them, by confiding in them.

The nations of Europe by the gradual refinement of their manners, are gradually mitigating the horrors of war. And some late treaties particularly that between Prussia and the United States of America have introduced some of the most amiable and philosophical principles on the subject. All the principles that have been just mentioned have been recognized in that treaty. And we have reason to hope that such generous efforts in favour of

humanity

humanity made under such high authority will in the course of time establish the benevolent doctrine of the law of nature and nations, on a fixed and immoveable foundation.

On the Method of terminating War.

When injuries are so extensive that the idea of a balance of power among nations cannot be easily framed or realized force alone generally directs and limits the action of despots. If war is terminated by conquest, which is often the case, the victor has then an option to make choice, of all possible ways of using his power. He may exterminate the inhabitants, or secondly he may reduce them to slavery. In both these cases he replenishes the vacant land by inhabitants and subjects drawn from his ancient territories. Thirdly he may spare the people only changing entirely their laws, institutions and rules. Or finally he may suffer them to enjoy their laws and ancient customs but annexing them to his empire, and rendering them tributary to him. The two former of these two methods, nothing but power can justify. The last is the most politic and useful even for a despotic state. But where reason and philosophy preside at the termination of a war between nations independent and therefore equal, hostilities should be closed by treaty. In order to facilitate propositions of peace flags should be free and be held sacred. All armistices should be proposed and observed with perfect good faith. If the injured nation should prove, superiour in the war the utmost she can justly require, is reparation of the injuries she has suffered, and perhaps indemnification for the expence, or part of the expence she has incurred in pursuing redress. Sometimes the state of things may require that cautionary fortresses within the territory of another nation should be given up in order more effectually to guard against future infractions of the peace.

But

But to the disgrace of human nature reasonable terms of pacification are hardly to be expected except where nations are nearly equal in strength to one another so that equitable accommodations are preferable to prolonging a fruitless contest; or where they are surrounded by other nations who have formed, to themselves a certain system and balance of power, as is the case in Europe, and who find an interest in not suffering any one state to acquire too great a superiority over another and therefore throw too great a weight into the general scale. We are apt to flatter the age in which we live. But the improvements which have been recently introduced into the law of nations in Europe and the union that has prevailed in the treaties of her different states for more than a century past is the result of their equality of force, and their peculiar relations to one another, as much as of increasing knowledge and humanity.

Of laws Relative to a State of Neutrality

The rights and duties of neutrality, form an important branch of the law of nature and nations. They are particularly interesting to the United States of America while she holds her present relations to the other countries of the world and it were much to be desired that we might always have enlightened statesmen wise enough to understand them and firm enough to maintain them. The first duty of a neutral people is to observe, a perfect impartiality of conduct as far as concerns any existing war, towards the nations who may be engaged in it. This equality of behaviour does not preclude the neutral power, from fulfilling with good faith the stipulations of pre-existing treaties as to any definite supplies to be furnished to any of the parties at war or any privileges to be granted them. And complying with such engagements ought

nor

nor to interupt the amity existing between the neutral and any of the belligerent powers,* unless stipulated supplies or privileges go to such an extent as by reasonable construction to destroy the right of neutrality, and in fact to render the nation claiming to be neutral a party in the war. VanBynkershock, and Valle both maintain the principle that if a war is manifestly unjust and a nation to whom another has stipulated certain succours is known to be the aggressour in that case the stipulation is of itself void. In all other cases they contend for its obligation. I confess the principle seems to lay a foundation for every lax national ~~authority~~ morality. Permitting a nation in one case to examine another cause, with whom it has federal engagements before she will fulfill them is in effect to permit it in all cases.

A prudent nation ought always to be cautious as to the nature of the engagements into which she enters; and to leave herself at liberty in the very term of them nor to aid injustice. It is difficult however for one people to estimate the justice of a war in which another may be engaged, and neutral power has no right to pronounce an opinion on the subject; or discover by its conduct towards the parties that it has formed an opinion. In the next place it is the right of neutral nations to continue their commerce free and unrestricted with all the belligerent powers. There is no exception to this right but

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* A late example of this doctrine happened in the war between Russia and Sweden (A.D. 1788.) Denmark was bound by previous treaty to furnish Russia with a certain number of ships and troops. This stipulation she accordingly fulfilled, without breaking her friendship with Sweden. Yet such articles in treaties are generally of dangerous tendency

but naval and military stores and provision going to a place that is actually besieged. These articles are usually specifically enumerated, in treaties and prohibited under the title contraband.

The right of seizing contraband articles is connected with another right in ships of war to stop neutral vessels, in their voyage and search them. But because this right is vexatious, and often very injurious to the fair trader; it is to be exercised, wholly at the peril, of those who search the vessel, who consequently are liable to the injured party, if no contraband goods are found, for all damages, that may be committed, in the search, or that may result from detention on his voyage. Not only the goods denominated contraband but all property of the enemy discovered on board a neutral vessel has hitherto been made liable to seizure by the law of nations. But the pretence of exercising of this right has been the source of many abuses and of so much interruption and injury to fair and legitimate trade that some nations have with great reason attempted to correct it in their late treaties, by making the vessels of the contracting parties, when one may happen, to be in the relation of neutrality, at the same time that the other is engaged in war a sufficient protection and safeguard to the freight universally. Wherever these treaties exist they form so many positive laws in amendment of what has been hitherto acknowledged as the law of nature and nations, on the subject.

And

decency and ought surely if ever to be admitted except among nations who find it necessary for their common safety to enter into a mutual league.

And happy would it be for the interest of the commercial world and not unfavorable to the success of a just war, if the principles were adopted by all nations that neutral bottoms* make free, property. Another principle immediately connected with the preceding, is that the property of a neutral people is free even in vessels of an enemy nation. For they have a right to make use of the assistance of their friends, without fearing it should operate against them. Neutral powers have a right in the next place to preserve their territories inviolate from all the contending parties, and it is the duty of all belligerent nations to respect the limits of neutral jurisdiction. These limits have been before defined. Within them an enemy cannot justly be attacked, nor a capture lawfully be made. If any such hostility be committed within neutral jurisdiction, the neutral power is under obligation to demand satisfaction from the offending nation, and to procure redress for the nation that has been injured while under its protection.

Some jurists have made one exception to this principle. If the vessel of the enemy has been attacked in the open sea, and flies for shelter within neutral jurisdiction, they may maintain that the victor may pursue her in the ardour of victory and capture her if there be no interruption of the battle or pursuit even within neutral limits. This is an exception that will be found very dangerous

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* The celebrated marine ordinance of France, issued in 1681, and 1704 perfected in 1744, is calculated to ascertain by the best and clearest rules, that ever were published the genuineness of the neutral vessels and their cargoes.

"Dum opus fervet," says VanBynkershock.

dangerous in practice; and the United States have judged better who have given cognizance of all captures made within their jurisdiction to the district courts. Yet no vessel should be permitted to take refuge as a neutral harbour, with the view of making preparations there to renew the conflict. And generally all military equipments or naval armaments made by any of the belligerent powers within neutral jurisdiction are contrary to the rights of neutrality. If a vessel of war, is forced, by stress of weather into a neutral harbour and has suffered damages at sea, she may be permitted to repair those damages, but must depart without making any other equipment. A neutral nation has a right to forbid all vessels of war, entering her harbours, if she thinks it necessary for her safety except they are compelled by the dangers of the sea, to take refuge for a short and limited time. If no such prohibition exists vessels of forces as well as merchant ships belonging to powers at war, may consistently with the law of nations, use her harbours as an asylum in case of danger, or as convenient stages of experiment in long voyages. But in no case shall they be permitted to use this right merely to lie in ~~ambuscade~~ wait for their enemy, or so as to afford them a favourable opportunity to attack him to advantage. In order more effectually to preserve an impartial neutrality, and save the rights of asylum and hospitality from being abused to serve any hostile purpose the United States have wisely ordained that if any armed vessel belonging to a belligerent nation depart from any of their harbours, no armed vessel belonging to a hostile power, and being within the harbours, at the time shall depart until twenty four hours after the former

mer. Otherwise he shall be deemed to have violated the law of nations

Two other questions remain to be decided on this subject.

1st Have belligerent powers a right to bring their prizes into neutral ports and sell them there? 2nd Has a neutral nation a right to enter into a commerce, with one of the belligerent parties in a time of war, to which she had not been previously admitted in time of peace.

With regard to the first, the neutral nation ought equally grant or refuse the privileges, to all the powers at war, unless she has already established a rule to herself in preexisting treaties. If she is not already bound the settled rule is to refuse the privilege to all. Mr Vattle in his commentaire sur l'ordonnance de la marine, 1681, tome, 2.ème 272, 277, asserts in very strong and positive terms, that impartial neutrality forbids, not only the selling of prizes in any neutral port, but even the introduction of them thither, except through stress of weather or from some inconvenience in navigation in which latter case, they ought not to be permitted to remain longer, than twenty four hours, as being sufficient time to answer all the necessary purposes of convenience.* With regard to the second question, independent nations always have a right of making commercial arrangements, with one another

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* These are his words, "Its neutrality towards the nations at war, does not favour the one to the prejudice of the other; in order to conciliate this object, with the rights of asylum, nations have tacitly agreed and custom has ordered it as a common right, that an asylum should be given to foreign vessels with their prizes, that is to say if they have entered a port, being forced by a tempest as long as the tempestuous weather will not permit them again to be put to sea. But only for twenty four hours if they have entered for any other cause, Excepting the case of timpest if vessels are in a condition to sail the neutral power, is under an obligation to cause them to depart in twenty four hours, otherwise it would be a violation of its neutrality

whether in time of peace or war, these arrangements however being subject to those just restrictions that have been already pointed out and, admitted to take place in neutral trade in time of war. The English indeed in the confidence of their great maritime power have denied this right under the pretence that it is covering the property of an enemy under the privileges of a neutral commerce. They have contravened this principle in their own late treaty with the United States, by admitting our citizens, to a share in their commerce which they had not enjoyed before the present war with France. As the spirit of commerce tends to mitigate the ferocity of war; and so many improvements have been actually introduced by this mean, into its barbarous code, during the two last centuries, the extension of neutral privileges will be found to contribute to the interest and happiness of mankind. They merit the attentive study and the firm support of every American statesman.

Thus have I sketched to you some outlines of a system of philosophy. Your time permits you now only to acquaint yourselves with its most general principles. Your future studies must perfect a most useful and important branch of knowledge which at present you can have said to have just begun. The philosophical discussion which I had proposed, to myself of the federal constitution, of America I must reserve for another class. In the mean time I flatter myself with the hope of seeing many of you among the most enlightened statesmen and upright patriots of your country.

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trality" these observations says he regard only vessels of war, with their prizes and not those vessels without prizes take refuge in a neutral harbour from the pursuit of an enemy or enter it for any other cause. ~ See Lord Hawkesbury discourse on the conduct of Great Britain in respect to neutral nations page 18. ~

Finis of the 30th Last, and every Lecture. ~

John J. Stoddert — No 52 —

John S. Griffith — No 52

1830

F. Anderson
1809.

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Ford

John T. Stoddert
1810.